

## Design Law

### **LAW NO. 17 - 97 ON THE PROTECTION OF INDUSTRIAL PROPERTY**

#### **TITLE I GENERAL PROVISIONS**

##### **Article 1**

Within the meaning of this Law, the protection of industrial property shall concern patents for invention, layout-designs (topographies) of integrated circuits, industrial designs and models, trademarks and service marks, trade names, indications of source and appellations of origin and the repression of unfair competition.

##### **Article 2**

Industrial property shall be understood in its widest sense and shall apply not only to industry, commerce as such and to services, but also to all production in the field of the agricultural and mining industries and all manufactured or natural products such as cattle, minerals and beverages.

##### **Article 3**

The nationals of each of the countries member of the International Union for the Protection of Industrial Property shall enjoy the protection of industrial property rights provided by this Law subject to complying with the conditions and formalities laid down herein.

The same protection shall be afforded to nationals of countries party to any other treaty concluded with respect to industrial property to which Morocco is party and which provides in its provisions for treatment of its nationals that is no less favorable than that enjoyed by the nationals of those countries.

##### **Article 4**

No obligation of domicile or establishment in Morocco, when protection is claimed in Morocco, may be required of the nationals of the Member States of the International Union for the Protection of Industrial Property.

Natural or legal persons who do not have a domicile or headquarters in Morocco or do not have an industrial or commercial establishment in Morocco, shall be required to elect an address for service with a representative domiciled or having his headquarters in Morocco who will effect on their behalf any acts before the body responsible for industrial property.

Resident nationals and foreigners habitually residing in Morocco, whether natural or legal persons, may personally file their applications for an industrial property title, as also any

subsequent acts relating thereto, or may designate for that purpose a representative domiciled or having his headquarters in Morocco.

#### **Article 5**

Nationals of countries not party to the International Union for the Protection of Industrial Property shall enjoy the benefit of the provisions of this Law if they are domiciled or have a real and effective industrial or commercial establishment on the territory of one of the countries of the Union.

#### **Article 6**

Any person who has effected a regular filing of an application (initial application) for a patent, a certificate of addition relating to a main patent, for a layout-design (topography) of an integrated circuit, an industrial design or model or a trademark or service mark in one of the countries of the International Union for the Protection of Industrial Property, or his successor in title, shall enjoy, when filing such application in Morocco (subsequent application), a priority right during the period of time set out in Article 7 below.

#### **Article 7**

The aforementioned priority period shall be 12 months for patents, certificates of addition relating to a main patent and for layout –designs (topographies) of integrated circuits, and six months for industrial designs and models and trademarks and service marks. The periods shall begin as from the filing date of the initial application filed in one of the countries of the Union, whereby the day of filing shall not be included in the period. If the last day of the period is a public holiday or a non-working day, the period shall be extended to the first working day thereafter.

#### **Article 8**

Any person wishing to avail himself of the priority of an earlier filing made in one of the countries of the Union shall be required to make a written priority declaration stating the date, number and country of origin of such filing. The declaration must be made on the date of the filing of the application in Morocco.

Within three months from the date of filing of the application in Morocco, the applicant shall be required to furnish the documents proving the prior filing in accordance with the conditions to be determined by regulation.

The same formalities and time limits as laid down in the first and second paragraphs of this Article shall apply to any natural or legal person who claims more than one priority right in one and the same application for filing in Morocco.

#### **Article 9**

Where a priority right is duly claimed, a filing may not be invalidated by acts accomplished during the periods of time laid down in Article 7 of this Law, in particular by another filing, by the publication or working of a patent or of a layout-design (topography) of an integrated circuit, by the selling of copies of an industrial design or model or by the use of a trademark.

**Article 10**

The acts accomplished during the priority period by third parties acting in good faith shall not generate any right beyond the filing date of an application filed with priority in Morocco. Such acts may not lead to any action for damages.

**Article 11**

Failure to comply with the time limits and formalities laid down in Articles 7 and 8 above shall lead to loss of enjoyment of the priority right in Morocco.

**Article 12**

Patents, certificates of addition relating to a main patent, layout--designs (topographies) of integrated circuits, industrial designs and models and trademarks and service marks filed with a priority shall enjoy a term of protection equal to that provided for filings made without a claim to priority.

**Article 13**

Patents, certificates of addition relating to a main patent, layout--designs (topographies) of integrated circuits, industrial designs and models and trademarks and service marks applied for during the priority period shall be entirely independent of the titles obtained in one of the countries of the Union, for the same subject matter, both as regards the causes of nullity and cancellation as regards the term of protection.

**Article 14**

All operations concerning the filing of applications for industrial property titles and all acts concerning such titles shall be entered in the registers kept for that purpose by the body responsible for industrial property. The list and content of such registers, to be conserved indefinitely by that body, shall be laid down by regulation.

The body responsible for industrial property shall keep the elements of the files of applications for industrial property titles, in the original or as a copy, up to the end of a ten-year period following termination of the relevant rights.

**Article 15**

Any dispute arising from the application of this Law, with the exception of the administrative decisions laid down herein, shall be heard exclusively by the commercial courts.

**TITLE II  
PATENTS FOR INVENTION Chapter I  
Scope of Application****Article 16**

An industrial property title may be granted by the body responsible for industrial property to any invention. Such title shall confer on the holder or his successors in title an exclusive right to work the invention. The right to the industrial property title shall belong to the inventor or his successors in title, subject to the provisions of Article 18 below.

If two or more persons have made an invention independently of each other, the right to the industrial property title shall belong to the person who can prove the earliest date of filing.

#### **Article 17**

Inventions shall be protected by the following industrial property titles:

(a) patents, granted for a term of protection of 20 years as from the filing date of the patent application;

(b) certificates of addition, being accessory titles for inventions of which the subject matter is related to at least one of the claims in a main patent. Such certificates shall be granted for a term beginning with the filing date of the relevant application and expiring on the expiry date of the main patent to which they are related.

#### **Article 18**

Where the inventor is a salaried person, the right to the industrial property title, failing any contractual clause more favorable to the salaried person, shall be defined in accordance with the following provisions:

(a) Inventions made by a salaried person in the execution of a work contract comprising an inventive mission corresponding to his effective functions or of studies and research which have been explicitly entrusted to him shall belong to the employer. The conditions under which the salaried person who is the author of such invention shall enjoy additional remuneration shall be determined by the collective agreements and individual employment contracts.

Any dispute relating to the additional remuneration shall be submitted to the court.

(b) All other inventions shall belong to the salaried person. However, where an invention is made by a salaried person during the execution of his functions or in the field of activity of the company or by reason of knowledge or use of technologies or specific means of the company or of data acquired by the company, the salaried person shall be required to inform his employer thereof immediately by a written declaration sent by registered letter with advice of delivery.

Where there is more than one inventor, a joint declaration may be made by all such inventors or by some of them only.

The contents of the declaration shall be laid down by regulation.

The employer shall enjoy a period of six months as from the date of receipt of the written declaration referred to above to claim ownership or enjoyment of all or some of the rights deriving from the invention made by his employee by filing a patent application with the body responsible for industrial property.

However, if the employer has not filed a patent application within the aforementioned period, the invention shall revert as of right to the salaried person.

The salaried person shall be entitled to obtain a fair price which, failing agreement between the parties, shall be stipulated by the court; the latter shall take into consideration all elements which may be supplied, in particular by the employer or by the salaried person, to compute the fair price as a function of both the initial contributions of either of them and the industrial and commercial utility of the invention.

(c) The salaried person and the employer shall communicate to each other all relevant information concerning the invention. They shall refrain from making any disclosure which would compromise, in whole or in part, the exercise of the rights afforded under this Title.

Any agreement between the salaried person and his employer concerning an invention made by the salaried person shall be recorded in writing, on pain of nullity.

#### **Article 19**

Where an application for the grant of an industrial property title has been made either for an invention unlawfully taken from an inventor or his successors in title or in violation of a statutory or contractual obligation, the injured party may claim ownership of the title granted before the court.

Actions claiming ownership shall be barred after three years from entry of the title in the national patent register referred to in the first paragraph of Article 58 below.

However, in the event of bad faith at the time the title was granted or acquired, the time limit for prescription shall be three years as from the expiry of the title.

#### **Article 20**

The inventor, whether salaried or not, shall be named as such in the patent. He may also oppose such identification.

#### **Article 21**

An invention may concern products, processes or any new application or combination of known means to achieve a result unknown in the prior art.

An invention may also concern pharmaceutical compounds, pharmaceutical products or remedies of all kinds, including processes and apparatus serving to obtain them.

#### **Article 22**

Any invention that is new, involves an inventive step and is susceptible of industrial application may be patented.

#### **Article 23**

The following shall not be regarded as inventions within the meaning of Article 22 above:

- (1) Discoveries, scientific theories and mathematical methods;
- (2) Aesthetic creations;
- (3) Schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
- (4) Presentations of information.

The provisions of this Article shall exclude patentability of the elements listed in those provisions only to the extent to which a patent application or patent relates to one such element considered as such.

#### **Article 24**

The following shall not be patentable:

- (a) Inventions the publication or implementation of which would be contrary to public policy or morality;
- (b) New plant varieties subject to the provisions of Law 9-94 on the Protection of New Plant Varieties.

#### **Article 25**

Methods for the treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be regarded as inventions susceptible of industrial application within the meaning of Article 22 above. This provision shall not apply to products, in particular substances or compounds, for use in any of these methods.

#### **Article 26**

An invention shall be considered to be new if it does not form part of the state of the art.

The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way, before the date of filing of the patent application in Morocco or of a patent application filed abroad and for which valid priority has been claimed.

Notwithstanding the provisions of this Article, disclosure of an invention shall not be taken into consideration in the following two cases:

- (1) If it occurred within the six months preceding the filing date of the patent application;
- (2) If it results from the publication, after the date of such filing, of a prior patent application and if, in either case, it was due directly or indirectly to:

(a) an evident abuse in relation to the applicant or his legal predecessor;

(b) the fact that the applicant or his legal predecessor had displayed the invention at an official, or officially recognized, international exhibition held on the territory of one of the countries of the International Union for the Protection of Industrial Property.

However, in the latter case, the displaying of the invention must have been declared at the time the application was filed.

#### **Article 27**

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

#### **Article 28**

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

#### **Article 29**

During the whole validity of a patent, the patentee or his successors in title may make improvements or additions to the invention, that shall be recorded by a certificate of addition granted under the same formalities and conditions as the main patent and having the same effects as the latter.

The provisions of this Law on patents shall apply to certificates of addition, with the exception of the provisions relating to the term of a patent and the payment of the fees required for maintaining the validity of the patent, provided for, respectively, in Articles 17(a) and 82 of this Law.

The term of protection of a certificate of addition shall end at the same time as that of the main patent.

Certificates of addition granted to a successor in title, and for which the application has been filed by that person, shall be enjoyed by all other successors in title.

#### **Article 30**

Any application for a certificate of addition may, prior to grant, at the request of the applicant or his representative, be converted to a patent application. Conversion to a patent application shall take effect as of the filing date of the application for the certificate of addition.

### **Chapter II**

#### **Filing and Processing of Patent Applications Section**

##### **I – Filing of Patent Applications**

#### **Article 31**

Any person wishing to obtain a patent shall file with the body responsible for industrial property an application file as prescribed below:

The application file shall comprise as of the date of filing:

(a) a patent application, containing the description of the invention, of which the content shall be laid down by regulation;

(b) proof of payment of the prescribed fees.

Any application file not containing the elements referred to in (a) and (b) above shall not be admitted at the actual time of filing.

The formalities to be complied with and the elements to be attached to the documents referred to in (a) and (b) above, particularly the elements relating to the description of the invention and to the relevant claims, shall be laid down by regulation.

If the application file contains the elements referred to in (a) and (b) above, the application as provided for in (a) above shall be entered in chronological order of filing in the national patent register referred to in the first paragraph of Article 58 below together with a date and a filing number.

### **Article 32**

Where, on the filing date, the application file lacks one or more of the elements to be attached to the documents referred to in (a) and (b) above, of which the list shall be laid down by regulation pursuant to the fourth paragraph of Article 31 above, the applicant or his representative shall be given a period of three months as from the filing date in order to regularize the file.

An application file thus regularized within the prescribed time limit shall maintain the initial filing date.

The three-month period shall be a clear time limit. If the final day is a public holiday or a non-working day, the time limit shall be extended to the next working day that follows.

### **Article 33**

A receipt establishing the date on which the elements referred to in the second and fourth paragraphs of Article 31 above have been submitted shall be issued immediately to the applicant or to his representative after the filing of the application.

### **Article 34**

The description of the invention shall comprise:

(1) a statement of the technical field to which the invention relates;

(2) a statement of the prior art, as known to the applicant, where it may be considered useful to understand the invention;

(3) a description of the invention as characterized in the claims enabling the technical problem and the solution provided to be understood; where appropriate, the advantages of the invention with relation to the prior art shall be stated;

(4) a brief description of the drawings, if any;

(5) a detailed description of at least one manner of implementation of the invention; the description shall normally be accompanied by examples and by references to drawings, if any;

(6) a statement of the manner in which the invention is susceptible of industrial application if such application is not evident from the description or from the nature of the invention.

The description of the invention shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

#### **Article 35**

The claims shall define the matter for which protection is sought by stating the technical characteristics of the invention. A claim may not be based, except where absolutely necessary in order to express the technical characteristics of the invention, on simple references to the description or to the drawings.

#### **Article 36**

The description shall characterize the subject matter of the invention. It shall clearly and concisely show the technical designation of the invention and shall not contain any fancy denomination.

#### **Article 37**

The application may not contain:

(1) any elements or drawings whose publication or implementation would be contrary to public policy or morality;

(2) disparaging statements concerning the goods or processes of other persons or the merits or validity of the patent applications or patents of other persons. Simple comparisons with the state of the art are not in themselves considered disparaging;

(3) elements that are manifestly foreign to the description of the invention.

The application may comprise neither restrictions nor conditions nor reservations.

#### **Article 38**

The patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

#### **Article 39**

Prior to grant of a patent and on a reasoned request, the applicant or his representative may request rectification of linguistic or transcription errors and of material errors discovered in the elements and documents filed.

If the request for rectification concerns the description, the claims or drawings, rectification shall be authorized only if it is evident and no other wording or tracing could obviously have been intended by the applicant.

The request for rectification referred to in the first paragraph of this Article shall be filed in writing and shall contain the subject matter of the proposed amendments.

A decision on the request for rectification shall be taken by the body responsible for industrial property within 15 days as from the filing date of the request.

#### **Article 40**

The holder of a patent application or his representative holding special powers, may, as from the filing date of the application and prior to the date of grant of a patent, withdraw his application by means of a written declaration, subject to the following provisions:

(a) If real property rights under a license or a pledge have been entered in the national patent register referred to in the first paragraph of Article 58 below, the withdrawal declaration shall be admissible only if it is accompanied by the written consent of the holders of such rights;

(b) If the patent application is jointly owned, withdrawal of the application may be effected only if requested by all the joint owners.

A notice of the withdrawal of the application shall be entered in the national patent register referred to in the first paragraph of Article 58 below by the body responsible for industrial property.

#### **Article 41**

A patent application shall be refused if:

(1) it is not deemed an invention under Article 23 above;

(2) it is not patentable under Article 24 above;

(3) it is not deemed susceptible of industrial application under Article 25 above;

(4) it has not been regularized within the three-month period provided for in Article 32 above;

(5) it does not comply with the provisions of Article 37 above;

(6) it relates to more than one invention or to a group of inventions not linked within the meaning of Article 38 above.

The refusal of a patent application shall be reasoned and shall be notified to the applicant or his representative by registered letter with advice of delivery. A notice of such refusal shall be entered in the national patent register referred to in the first paragraph of Article 58 below.

#### **Article 42**

For the needs of national defense, the grant and working of a patent may be prohibited, definitively or provisionally, if publication of the invention is liable to damage the security of the nation.

To that end, any patent application, once the application file has been regularized, may be consulted, during the 15-day period referred to in the first paragraph of Article 43 below, confidentially at the premises of the body responsible for industrial property.

Prior to expiry of the 15-day period referred to in the preceding paragraph, a decision either to postpone the grant and disclosure of the patent up to expiry of the 18-month period provided for in the first paragraph of Article 44 below or to definitively prohibit the grant, disclosure and working of the patent shall be notified to the competent administrative authority and to the body responsible for industrial property.

In the event of postponement and if, on expiry of the 15-day period referred to in the second paragraph of this Article, no decision has been notified to the competent administrative authority and to the body responsible for industrial property, the aforementioned record shall be handed or notified and the patent granted to the applicant or his representative in accordance with Articles 46 to 48 below.

In the event of definitive prohibition of grant, disclosure and working of a patent, the aforementioned report shall not be drawn up and a patent shall not be granted.

The body responsible for industrial property shall be required to notify the applicant or his representative in writing of any decision taken under this Article.

Definitive or provisional prohibition to disclose and work an invention shall give rise to compensation to be laid down in agreement with the holder or holders of the application or their representative.

Any dispute concerning compensation shall be heard by the Administrative Court of Rabat.

#### **Article 43**

Where a patent application has not been subject to refusal pursuant to the provisions of Article 41 above and on expiry of a period of 15 days as from the filing date or, where appropriate, from the date on which the patent application file has been regularized, a report establishing the filing of the application and stating the date of such filing and the elements attached shall be drawn up by the body responsible for industrial property.

The report shall be handed or notified to the applicant or to his representative.

#### **Article 44**

Application files regularly filed with the body responsible for industrial property shall not be made public before expiry of 18 months. Such period shall begin on the filing date of the applications concerned.

On expiry of the period referred to above, any person may obtain access to and copy the elements and documents referred to in Article 49 below.

#### **Article 45**

Only the holder or holders of a patent application or their representative, to whom the report has been handed or notified, may obtain, on a written request, during the period laid down in Article 44 above, an official copy of the original of the description and, where appropriate, of the drawings, issued by the body responsible for industrial property.

### **Section II Grant of Patents**

#### **Article 46**

Patents shall be granted after the 18-month period referred to in the first paragraph of Article 44 above.

Patents shall be granted as a function of the filing date of the corresponding application in accordance with a calendar and periodicity laid down by regulation.

#### **Article 47**

Where the application has not been refused, patents shall be granted without prior examination, at the responsibility of the applicants and without any guarantee as to the reality of the invention or the true nature or exactness of the description or of the merits of the invention.

#### **Article 48**

Patents shall be granted by the body responsible for industrial property and handed to the applicants or their representatives, and to which the description, the claim or claims and, where appropriate, the drawings shall be attached.

The number of the patent and the date of grant shall be entered in the national patent register referred to in the first paragraph of Article 58 below. As from the day of such entry, any person may have access thereto and make copies.

#### **Article 49**

The descriptions, claims and drawings of granted patents and certificates of addition shall be communicated by the body responsible for industrial property to any person wishing to obtain an official copy thereof.

#### **Article 50**

Granted patents shall be published in the official catalogue referred to in Article 89 below.

#### Chapter III Rights Deriving from Patents Section I - Exclusive Right to Work

##### **Article 51**

The rights deriving from a patent application or a patent shall take effect as from the filing date of the application and shall afford to their owner or his successors in title the exclusive right to work referred to in the first paragraph of Article 16 above.

##### **Article 52**

The extent of the protection afforded by a patent shall be determined by the terms of the claims. However, the description and drawings shall be used to interpret the claims.

Where the subject matter of the patent is a process, the protection afforded by the patent shall extend to the products directly obtained by such process.

##### **Article 53**

The following shall be prohibited, save consent by the owner of the patent:

- (a) Making, offering, putting on the market or using a product which is the subject matter of the patent or importing or stocking a product for such purposes;
- (b) Using a process which is the subject matter of the patent or, when the third party knows or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the owner of the patent, offering the process for use on Moroccan territory;
- (c) Offering, putting on the market or using the product obtained directly by a process which is the subject matter of the patent or importing or stocking for such purposes.

##### **Article 54**

It shall also be prohibited, save consent by the owner of the patent, to supply or offer to supply, on Moroccan territory, to a person other than a person entitled to work the patented invention, the means of implementing, on that territory, the invention with respect to an essential element thereof where the third party knows, or it is obvious from the circumstances, that such means are suited and intended for putting the invention into effect.

The provisions of the preceding paragraph shall not apply where the means of implementation are staple commercial articles, except where the third party induces the person supplied to commit acts prohibited by Article 53 above.

Persons carrying out the acts referred to in Article 55 below shall not be deemed persons entitled to work the invention within the meaning of the first paragraph above.

##### **Article 55**

The rights afforded by a patent shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject matter of the patented invention;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;
- (d) acts in relation to the product covered by the patent carried out on Moroccan territory after the product has been placed on the market in Morocco by the patentee or with his express consent;
- (e) the use of patented subject matter on board aircraft, land vehicles or vessels of member countries of the International Union for the Protection of Industrial Property which temporarily or accidentally enter the airspace, the territory or the territorial waters of Morocco;
- f) acts performed by any person who, in good faith, at the filing date or, where priority is claimed, the priority date of the application on the basis of which the patent was granted on the territory of Morocco, was using the invention or making effective and serious preparation to use it, to the extent that such acts do not differ in their nature or purpose from the previous effective or envisaged use. The right of the earlier user may not be transferred except with the enterprise to which it is related.

## **Section II**

### **Assignment and Loss of Rights Subsection**

#### **I - General Provisions**

#### **Article 56**

The rights deriving from a patent application or a patent shall be assignable in whole or in part.

They may be subject in whole or in part to the grant of an exclusive or non-exclusive license to work the invention or to pledging.

The rights afforded by a patent application or a patent may be asserted against a licensee who infringes the limitations on his license imposed under the preceding paragraph.

Subject to the provisions of Article 19 above, assignment of the rights referred to in the first paragraph of this Article shall not affect rights acquired by third parties prior to the date of assignment.

Acts comprising assignment or licensing, referred to in the first two paragraphs above, shall be recorded in writing, on pain of nullity.

#### **Article 57**

Failing contractual provisions, the licensee shall automatically enjoy any certificates of addition relating to the patent that is the subject matter of the license which may be granted subsequently

to the patentee or his successors in title after the date on which the licensing contract was concluded.

Likewise, the patentee or his successors in title shall enjoy the benefit of any certificates of addition relating to the patent which may be subsequently granted to the licensee as from the date on which the licensing contract was concluded.

#### **Article 58**

All acts assigning, amending or affecting rights deriving from a patent application or a patent may be asserted against third parties only if entered in a register, known as "the National Patent Register", kept by the body responsible for industrial property.

However, prior to such entry, an act shall be invocable against third parties who have acquired rights after the date of such act, but who gained knowledge of it on acquisition of the rights.

Acts modifying the ownership of a patent application or the enjoyment of the rights deriving therefrom, such as assignment, licensing, constitution or transfer of a pledge or renunciation of a pledge, seizure, validation and lifting of seizure, shall be entered at the request of one of the parties to the act.

For entry of notices following a court decision that has become final, the registrar of the court shall communicate within 15 days of such decision to the body responsible for industrial property, a full and free copy of decisions relating to the existence, extent and exercise of rights attaching to the protection laid down in this Title.

The formalities to be complied with and the elements to be attached to the request for entry shall be laid down by regulation.

#### **Article 59**

Any concerned person may obtain an extract from the National Patent Register.

#### **Subsection II Compulsory Licenses**

#### **Article 60**

On expiry of a period of three years from the grant of a patent or four years from the filing date of an application and subject to the conditions laid down in Articles 61 and 62 below, any public or private legal person may be granted a compulsory license under the patent provided that, at the time of the request and failing legitimate reasons, neither the owner of the patent nor his successor in title:

(a) has begun to work or has made real and effective preparations for working the invention that is the subject matter of the patent on the territory of the Kingdom of Morocco;

(b) has marketed the product that is the subject matter of the patent in a quantity sufficient to satisfy the needs of the Moroccan market; or

(c) if working or marketing of the patent in Morocco has been abandoned for more than three years.

#### **Article 61**

The application for a compulsory license shall be made to the court. It must be accompanied by evidence establishing that the applicant has been unable to obtain a license from the owner of the patent amicably under reasonable conditions and commercial terms and that he is in a position to work the invention in order to satisfy the needs of the Moroccan market.

#### **Article 62**

A compulsory license may only be non-exclusive.

Any compulsory license shall be granted mainly for the supply of the Moroccan market.

It shall be granted on conditions laid down by the court, particularly in respect of its duration and its field of application, which shall be limited to the purposes for which the license has been granted, and to the amount of royalties to be paid in respect thereof. Those royalties shall be laid down on a case-by-case basis, taking into account the economic value of the license.

Those conditions may be amended by the court on a request by the owner or by the licensee.

#### **Article 63**

Where the circumstances that led to the grant of a compulsory license cease to exist and are unlikely to reoccur, the license to work may be withdrawn, subject to adequate protection of the legitimate interests of the licensees. The court may review, at the reasoned request of any party having an interest therein, whether the circumstances continue to exist.

If the holder of a compulsory license does not comply with the conditions under which such license was granted to him, the owner of the patent and, where appropriate, the other licensees may request the court to withdraw that license.

Any assignment of rights deriving from a compulsory license shall be subject, on pain of nullity, to the authorization of the court.

#### **Article 64**

Any judicial decision that has become final and that has been taken in application of the provisions of this Sub-section II shall be immediately notified by the registrar to the body responsible for industrial property, which shall enter it in the National Patent Register.

#### **Article 65**

The holder of a compulsory license may be granted by the court, under the conditions laid down in Articles 60 to 62 above, failing amicable agreement, a compulsory license under a certificate of addition relating to the patent even if the certificate was granted prior to expiry of the time limits laid down in Article 60 above.

## **Article 66**

Where an invention protected by a patent cannot be worked without infringing rights deriving from an earlier patent of which the owner refuses a license under reasonable conditions and commercial terms, the owner of the later patent may obtain from the court a compulsory license under the same conditions as set out in Articles 60 to 62 above, with the proviso that:

- (a) the invention claimed in the later patent represents substantial technical progress and economic interest in relation to the invention claimed in the earlier patent;
- (b) the owner of the earlier patent shall be entitled to a reciprocal license under reasonable conditions in order to use the invention claimed in the later patent;
- (c) the license relating to the earlier patent shall be assignable only if the later patent is also assigned.

### **Sub-section III Ex officio Licenses**

## **Article 67**

Where the interests of public health demand, patents granted for medicines, for processes for obtaining medicines, for products necessary in obtaining such medicines or for processes for manufacturing such products may be worked ex officio in the event of such medicines being made available to the public in insufficient quantity or quality or at an abnormally high price.

Ex officio working shall be ordered by administrative act at the request of the office responsible for public health.

## **Article 68**

The administrative act referred to in Article 67 above shall be notified to the owner of the patent, to the holders of licenses, where appropriate, and to the body responsible for industrial property, which shall enter it ex officio in the National Patent Register.

## **Article 69**

As from the day of the publication of the administrative act ordering ex officio working of a patent, any qualified person may request the grant of a license to work, known as an "ex officio license".

It shall be applied for and granted in the form laid down by regulation.

An ex officio license shall be granted under fixed conditions, particularly in respect of its duration and field of application.

The royalties under the license shall be agreed by the parties and, failing agreement, their amount shall be laid down by the court.

It shall take effect as from the date of notification of the act of grant to the parties. The act shall be entered ex officio in the National Patent Register.

Such license may only be non-exclusive. The rights deriving from an ex officio license may be neither assigned nor transferred nor mortgaged.

#### **Article 70**

Amendments to the licensing clauses, requested by either the patent owner or the holder of the license, shall be decided on and published under the procedure laid down for the grant of such license. Where they concern the amount of the royalties, they shall be decided in accordance with the procedure laid down for the initial setting of the amount.

Withdrawal of the license requested by the patent owner for failure to carry out the obligations imposed on the holder of the license shall be effected in accordance with the provisions laid down in the regulatory text referred to in Article 69.

#### **Article 71**

The competent administration may issue formal notice to the owners of patents other than those referred to in Article 67 above to work them in such a manner as to satisfy the needs of the national economy.

#### **Article 72**

The decision to issue formal notice under Article 71 above shall be reasoned and notified to the patent owner and, where appropriate, the holders of licenses entered in the National Patent Register or to their representatives.

#### **Article 73**

If the formal notice referred to in Article 71 above remains without effect within a period of one year starting with the day of receipt of notification and if the lack of working or insufficient quality or quantity of the working undertaken seriously prejudices economic development and the public interest, the patents that are the subject matter of the formal notice may be worked ex officio.

Ex officio working shall be determined by an administrative act.

The one-year period referred in the first paragraph above may be extended by administrative act of the competent administrative authority if the owner of the patent can give evidence of legitimate reasons that are compatible with the demands of the national economy.

The additional period referred to in the preceding paragraph shall begin on the day on which that one-year period expires. The decision granting such period shall be taken and notified in accordance with the procedure and with the form laid down for the decision to give formal notice.

#### **Article 74**

Where ex officio working of patents is applied under the provisions of the first and second paragraphs of Article 73 above, the provisions of Articles 68 to 70 above shall apply.

#### **Article 75**

The State may at any time obtain ex officio, in order to meet its defense requirements, a license to work an invention that is the subject matter of a patent application or a patent, whether the working is to be done by the State itself or on its behalf.

The ex officio license shall be granted at the request of the administration responsible for national defense by means of an administrative act.

That act shall lay down the conditions of the license, but excluding those relating to the amount of royalties to be paid in consideration thereof. The license shall take effect on the date of the request for an ex officio license.

Failing amicable agreement between the patent owner and the administration concerned, the amount of the royalties shall be laid down by the Administrative Court of Rabat.

#### **Sub-section IV Seizure**

#### **Article 76**

Seizure of a patent shall be effected on the basis of an order issued by the presiding judge of the court acting in chambers and notified to the owner of the patent, to the body responsible for industrial property and to any persons holding rights in the patent.

As a result of seizure, no subsequent changes to the right deriving from a patent may be invoked against the creditors effecting seizure.

On pain of nullity of the seizure, the execution creditor shall be required, within a period of 15 days as from the date of the seizure order, to institute court proceedings for validation of the seizure and for the purpose of offering the patent for sale.

#### **Sub-section V Joint Ownership of Patents**

#### **Article 77**

Subject to the provisions of Article 80 below, joint ownership of a patent application or of a patent shall be governed by the following provisions:

(a) Each joint owner may work the invention for his own benefit subject to equitably compensating the other joint owners who do not personally work the invention or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the court;

(b) Each joint owner may take action for infringement for his own exclusive benefit. The action for infringement shall be notified to the other joint owners. Judgment shall be deferred until such notification has been proved;

(c) Each joint owner may grant to a third party a non-exclusive license for his own benefit subject to making equitable compensation to the other joint owners who do not personally work the invention or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the court.

However, the draft licensing agreement must be notified to the other joint owners accompanied by an offer for transfer of the share at a specified price.

Within three months of such notification, any of the joint owners may oppose the granting of a license on condition that he acquires the share of the joint owner wishing to grant the license.

Failing agreement within the time limit as provided above, the price shall be laid down by the court. The parties shall have 30 days from notification of the court decision to forego the sale or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party.

(d) An exclusive license may only be granted with the agreement of all the joint owners or by the authorization of the court;

(e) Each joint owner may, at any time, assign his share. The joint owners shall have the right of pre-emption for a period of three months from the notification of the intended assignment. Failing agreement on the price, such price shall be fixed by the court. The parties shall have a period of 30 days as from notification of the court decision, to forego the sale or the purchase of the joint initial share, without prejudice to any damages which may be due; costs shall be borne by the renouncing party.

#### **Article 78**

The provisions of Articles 960 to 981 of the DOC shall not apply to the joint ownership of a patent application or of a patent.

#### **Article 79**

A joint owner of a patent application or of a patent may notify the other joint owners that he relinquishes his share in their favor. As of the date of entry of such relinquishment in the National Patent Register, that joint owner shall be relieved of all obligations towards the other joint owners if they accept the relinquishment. The remaining joint owners shall divide the relinquished share between them in proportion to their rights in the joint property, except where otherwise agreed.

#### **Article 80**

The provisions of Articles 77 to 79 above shall apply where not otherwise agreed.

The joint owners may derogate therefrom at any time by means of a joint ownership agreement.

#### **Sub-section IV Miscellaneous Provisions**

##### **Article 81**

The exclusive right of working deriving from a patent protected under this Title shall terminate on expiry of its term of validity.

It may at any time be renounced by its owner with relation to the whole of the invention or to one or more of the patent claims.

Renunciation shall be effected by means of a written declaration by the patent owner or his representative. In the latter case, special powers of renunciation shall be attached to the declaration.

Where a patent is the subject of joint ownership, renunciation may be made only if requested by all the joint owners.

Where real property rights, under a pledge or license, have been entered in the National Patent Register, the declaration of relinquishment shall only be admissible if accompanied by the consent of the holders of such rights.

Relinquishment shall be entered in the National Patent Register. It shall take effect on the date of such entry.

##### **Article 82**

A patent owner who has not paid the required fees for maintaining his rights within the prescribed time limits shall forfeit those rights.

However, payment of the required fees may be validly made during an additional period of six months starting with their due date.

Where the required fees are not paid on their due date, a warning shall be addressed by the body responsible for industrial property, by registered letter with advice of delivery, to the patent owner, or to his representative, advising him that he will forfeit his rights if payment is not made before the expiry of the six-month period provided for in the preceding paragraph.

The absence of a warning shall not involve the liability of the body responsible for industrial property and shall not constitute grounds for restoral of the rights of the patent owner.

##### **Article 83**

A patent owner who has not paid the required fees on expiry of the six-month period provided for in the second paragraph of Article 82 above shall forfeit his rights.

##### **Article 84**

Forfeiture shall be recorded by means of a written, reasoned decision by the body responsible for industrial property, notified to the patent owner or his representative in the form laid down by regulation.

Forfeiture shall take effect as of the date on which the payment not made became due. A notice of the decision to record forfeiture shall be entered in the National Patent Register.

However, the patent owner may, within three months as from the date of receipt of notification of the decision referred to in the preceding paragraph, file an appeal with the body responsible for industrial property for restoral of rights if he can furnish a legitimate reason for failure to pay the prescribed fees.

Restoral of rights may be granted by written decision of the body responsible for industrial property on condition that the prescribed fees be paid prior to expiry of the three-month period referred to in the preceding paragraph.

Notice of the decision to restore rights shall be entered in the National Patent Register in which shall also be noted the date on which the prescribed fees were paid. The decision to restore rights shall be notified to the patent owner or his representative.

Forfeiture of a patent shall also imply forfeiture of any certificates of addition related to that patent.

#### **Article 85**

A patent may be revoked by the court at the request of any concerned person:

- (a) if the invention is not patentable within the terms of Articles 22 to 28 of this Law;
- (b) if the description of the invention does not disclose the invention in a manner sufficient to enable a person skilled in the art to carry it out;
- (c) if the subject matter of the invention extends beyond the application as filed;
- (d) if the claims do not define the scope of protection sought.

Where the grounds for revocation concern only a part of the patent, revocation shall be ordered in the form of a corresponding limitation of the claims.

#### **Article 86**

Revocation proceedings may be instituted by any concerned person.

In any proceedings to establish nullity of a patent, the public prosecutor may intervene as a party and submit pleadings for the absolute nullity of the patent.

He may even institute main proceedings directly to obtain nullity.

**Article 87**

A patented invention of which the owner has forfeited his rights and an invention for which the patent has been revoked may not be the subject matter of any other application for a patent.

**Article 88**

Certificates of addition shall terminate together with the main patent except in the case of a patent revoked pursuant to Article 85 above where certificates of addition are not affected by revocation if the improvements of which they consist constitute an invention.

**CHAPTER IV  
Publication of Patents****Article 89**

The body responsible for industrial property shall publish an official catalogue of granted patents. The acts referred to in the first paragraph of Article 58 above shall be shown therein.

**TITLE III  
Layout-Designs (Topographies) of Integrated Circuits****Chapter I  
Scope of Application****Article 90**

For the purposes of this Law:

- "layout-design (topography)" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture:

- "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

**Article 91**

Layout-designs (topographies) of integrated circuits that are original in the sense that they are the result of their creator's own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation may enjoy the protection provided by this Law.

A layout-design (topography) of an integrated circuit that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfils the conditions referred to in the preceding paragraph.

#### **Article 92**

The protection afforded a layout-design (topography) of an integrated circuit shall apply only to the layout-design (topography) of an integrated circuit as such, to the exclusion of any concept, process, system, technique or coded information embodied in the layout-design.

#### **Chapter II Miscellaneous Provisions**

#### **Article 93**

The provisions of Chapters II and III of Title II of this Law shall apply to layout-designs (topographies) of integrated circuits subject to the special provisions that follow.

#### **Article 94**

Any layout-design (topography) of an integrated circuit may be the subject matter of an industrial property title known as a "certificate for a layout-design (topography) of an integrated circuit".

Layout-designs (topographies) of integrated circuits shall be protected for a term of ten years as from the filing date of the corresponding application.

#### **Article 95**

The right to the title shall belong to the creator or his successors in title, subject to the provisions of Article 18 above.

The provisions of Articles 19 and 20 above shall apply to the layout--designs (topographies) of integrated circuits.

#### **Article 96**

The application for a certificate for a layout-design (topography) of an integrated circuit shall be accompanied at the time of filing by a copy or a drawing of the layout-design (topography) of an integrated circuit and, where the integrated circuit has been commercially exploited, of a sample of such integrated circuit, together with the information defining the electronic function that the integrated circuit is intended to perform.

#### **Article 97**

The filing of the application referred to in Article 96 above, unless the layout-design is commonplace, may not be made two years after the layout-design is first commercially exploited anywhere in the world. Such filing may also, in no event, be made 15 years after the final or intermediate topography of the integrated circuit has been fixed or encoded for the first time if it has never been commercially exploited.

#### **Article 98**

Any application for a certificate for a layout-design (topography) of an integrated circuit that does not comply with the provisions of Article 96 above and of Section I of Chapter II of Title II of this Law shall be rejected.

#### **Article 99**

The following acts shall be prohibited if performed without the consent of the holder of the rights in a layout-design (topography) of an integrated circuit:

- (a) The act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Article 91 above;
- (b) The act of importing, selling or otherwise distributing for commercial purposes a protected layout -design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated or an article incorporating such integrated circuit, solely to the extent that the article continues to contain an unlawfully reproduced layout-design.

#### **Article 100**

The following acts shall not be deemed unlawful:

- (a) The acts referred to in Article 99 above where performed for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
- (b) The creation on the basis of such evaluation, analysis or research of a distinct topography eligible for protection in accordance with the provisions of this Law;
- (c) Any of the acts referred to in Article 99 above with respect to an integrated circuit incorporating an unlawfully reproduced layout--design (topography), or of any article incorporating such integrated circuit, where the person performing or ordering such act did not know and had no reasonable ground to know, when acquiring such integrated circuit, that it incorporated an unlawfully reproduced layout-design. Once such person has received a notice informing him adequately that the layout-design was unlawfully reproduced, he may perform any of the acts referred to with regard to the stocks at his disposal or which he had ordered prior to such time, but may be required to pay to the rightholders an amount equivalent to a reasonable royalty that would have been required for such layout--design under a freely negotiated license.

#### **Article 101**

If no application for a certificate has been filed with respect to a layout-design (topography) of an integrated circuit within 15 years as from the date of its creation, it may no longer enjoy any exclusive right.

#### **Article 102**

Any concerned person may request the courts to establish the nullity of certificates for layout-designs (topographies) of integrated circuits that are not original within the meaning of Article 91 above and which do not meet the conditions laid down in Article 97 above.

#### **Article 103**

Any concerned person may obtain an extract from the register setting out the entries made in a register known as the "National Register of Certificates for Layout-Designs (Topographies) of Integrated Circuits" kept by the body responsible for industrial property.

### **TITLE IV INDUSTRIAL DESIGNS AND MODELS Chapter I Scope of Application**

#### **Article 104**

For the purposes of this Law, an industrial design shall mean any assemblage of lines or colors and an industrial model shall mean any three-dimensional shape, associated or not with lines or with colors, on condition that the assemblage or the shape lends a special appearance to an industrial or craft product and may serve as a type for the manufacture of an industrial or craft product.

An industrial design or model shall differ from similar articles either by a distinctive and recognizable configuration affording it novelty or by one or more external effects giving it an individual and new appearance.

#### **Article 105**

An industrial design or model shall be deemed new if it has not been made available to the public by advertising or any other means, prior to the date of its filing or, if appropriate, prior to a validly claimed priority date.

An industrial design or model shall not be deemed made available to the public by the simple fact that, within the six months preceding its filing date, it has been shown for the first time in an official or officially recognized international exhibition held on the territory of one of the countries of the International Union for the Protection of Industrial Property.

### **Chapter II Right to Protection**

#### **Article 106**

Ownership of an industrial design or model shall belong to the person who has created it or to his successors in title; however, the first person to file such industrial design or model shall be presumed, unless proved otherwise, to be the creator, subject to the provisions of Article 107 below.

#### **Article 107**

The provisions of Article 18 above shall apply to industrial designs and models.

#### **Article 108**

Where one and the same object may be considered both a patentable invention and a new industrial design or model and if the elements that constitute the novelty of the industrial design or model are inseparable from those of the invention, that object may be protected exclusively under the provisions applicable to patents.

#### **Article 109**

If two or more persons have collectively created an industrial design or model, the right to obtain legal protection shall belong to those persons collectively or to their successors in title. However, a person who has simply assisted in the creation of an industrial design or model without having made a creative contribution shall not be considered a creator or a joint creator.

#### **Article 110**

The provisions of Articles 77 to 80 above shall apply to industrial designs and models.

#### **Article 111**

The provisions of Article 19 above shall apply to industrial designs and models.

#### **Article 112**

Only industrial designs and models regularly filed and registered by the body responsible for industrial property shall enjoy the protection afforded by this Law as from the date of their filing.

On registration of an industrial design or model there shall be established an industrial property title known as a "industrial design or model registration certificate", filed and registered in accordance with and under the conditions provided in Chapter III of this Title.

#### **Article 113**

The protection provided by this Law shall not extend to industrial designs or models that are contrary to morality or public policy or to industrial designs or models that reproduce effigies, signs, abbreviations, denominations, decorations, emblems and currency referred to in Article 135(a) below without authorization to use from the competent authorities.

### **Chapter III**

#### **Filing Procedure and Registration of Industrial Designs and Models**

#### **Article 114**

Any person wishing to obtain an industrial design or model registration certificate shall file with the body responsible for industrial property an industrial design or model applicable in accordance with the conditions laid down in this Chapter. The deposit may be made by the applicant or by his representative.

One deposit may include up to 50 industrial designs or models on condition that those industrial designs or models are of the same category.

The industrial design or model file shall comprise as of the date of filing:

- (a) an application for deposit of an industrial design or model, stating the subject matter of the industrial design or model, of which the contents shall be laid down by regulation;
- (b) a graphic or photographic reproduction in three copies of the industrial designs or models and a list of the graphic or photographic reproductions relating thereto. The reproduction may be accompanied by a short description;
- (c) proof of payment of the prescribed fees.

An industrial design or model deposit file that does not comprise the elements referred to in (a), (b) and (c) above shall not be admissible at the actual time of filing.

The formalities to be complied with and the elements to be attached to (a), (b) and (c) above shall be laid down by regulation.

Where the industrial design or model deposit file comprises the elements referred to in (a), (b) and (c) above, the application for deposit of an industrial design or model as provided in (a) above shall be entered, in chronological order of deposit, in the national industrial designs and models register referred to in the first paragraph of Article 126 below, together with a date and deposit number.

#### **Article 115**

Where, on the date of deposit, an industrial design or model deposit file does not comprise one or more elements to be attached to the documents referred to in (a), (b) and (c) above, and of which the list shall be laid down by regulation pursuant to the fifth paragraph of Article 114 above, the applicant or his representative shall have a period of three months as from the date of deposit in order to regularize the file.

A file that is regularized within the prescribed period of time shall maintain the date of the initial deposit.

The three-month period is a clear time limit. If the last day is a public holiday or a non-working day, the period shall be extended to the following working day.

#### **Article 116**

A receipt establishing the date on which the elements referred to in the third and fifth paragraphs of Article 114 above have been filed shall be issued immediately to the applicant or to his representative after filing of the application.

#### **Article 117**

Within three months as from the date of deposit of the industrial design or model, the applicant or his representative may, on a reasoned request, ask for rectification of linguistic errors or mistakes in transcription together with any substantive errors noted in the elements and documents filed, with the exception of the graphic or photographic reproductions of deposited industrial designs or models, which may not be modified.

No rectification may be effected beyond the above mentioned time limit.

The request for rectification referred to in the first paragraph of this Article shall be submitted in writing and shall contain the subject matter of the proposed rectifications.

#### **Article 118**

An application for deposit of an industrial design or model shall be rejected if:

- (1) it does not comply with the provisions of the first paragraph of Article 104 above;
- (2) it does not comply with the provisions of Article 113 above;
- (3) it has not been regularized within the three-month time limit under Article 115 above.

The rejection of an application for the deposit of an industrial design or model shall be reasoned and shall be notified to the applicant or his representative by registered letter with advice of delivery. A notice of rejection shall be entered in the national industrial designs and models register referred to in the first paragraph of Article 126 below.

#### **Article 119**

Where the file of an industrial design or model deposit is not subject to rejection under the provisions of Article 118 above, the industrial design or model shall be registered by the body responsible for industrial property without prior substantive examination.

The date of registration shall be that of the deposit.

The deposit shall be registered in the national industrial designs and models register referred to in the first paragraph of Article 126 below.

#### **Article 120**

Following the registration provided in Article 119 above, a report establishing the deposit of the industrial design or model and stating the date of such deposit and the elements attached shall be drawn up by the body responsible for industrial property together with the industrial design or model registration certificate and the graphic or photographic reproduction of the industrial design or model. The report and the registration certificate shall be handed or notified to the applicant or his representative.

#### **Article 121**

Any concerned person may obtain, on written request, an official copy of the original of the industrial design or model on production of the graphic or photographic reproduction of the registered industrial design or model.

#### **Chapter IV**

##### **Effects of Registration of an Industrial Design or Model**

###### **Article 122**

The registration of an industrial design or model shall have effect for five years as from the deposit date. It may be renewed, subject to the same formalities and conditions as provided in Chapter III of this Title, for two further consecutive periods of five years. Renewal of a registration shall be effected within the six months preceding expiry of its term of validity.

However, a six-month period of grace as from expiry of the term of validity shall be afforded to the applicant in order to effect such renewal. Renewal shall begin on expiry of the term of validity of the registration.

###### **Article 123**

Any creator of an industrial design or model or his successors in title shall have the exclusive right to exploit, sell or have sold such industrial design or model in accordance with the provisions laid down by this Law, notwithstanding any rights they may hold under

other statutory provisions, particularly the legislation on the protection of literary and artistic works.

###### **Article 124**

The registration of an industrial design or model shall confer on its holder the right to prohibit others from performing the following acts where they are undertaken for commercial or industrial purposes:

- (a) reproduction of the industrial design or model with a view to its exploitation;
- (b) importing, offering for sale or selling a product reproducing the protected industrial design or model;
- (c) holding such product for the purposes of offering it for sale or selling it.

The acts referred to in (a) above shall not become lawful by the sole fact of the reproduction comprising secondary differences in relation to the protected industrial design or model or the fact that it relates to a different type of product from the industrial design or model concerned.

#### **Chapter V**

##### **Transfer and Loss of Rights**

###### **Section I**

###### **- General Provisions**

###### **Article 125**

The rights attaching to an industrial design or model may be transferred in whole or in part.

They may be subject, in whole or in part, to the grant of an exclusive or non-exclusive license to work or to a pledge.

The rights conferred by registration of an industrial design or model may be invoked against a licensee who infringes any of the limits of his license imposed under the preceding paragraph.

Subject to the provisions of Article 19 above, transfer of the rights referred to in the first paragraph of this Article shall not prejudice rights acquired by third parties prior to the date of transfer.

Acts comprising transfer or licensing as referred to in the first two paragraphs above shall be effected in writing, on pain of nullity.

#### **Article 126**

To be invocable against others, all acts transferring, amending or affecting rights attaching to an industrial design or model must be entered in the register known as the "National Industrial Designs and Models Register" kept by the body responsible for industrial property.

However, prior to entry, an act shall be invocable against others who have acquired rights after the date of such act, but who were aware of that act when acquiring those rights.

Acts modifying the ownership of an industrial design or model or enjoyment of the rights attaching thereto, such as assignment, licensing, constitution or transfer of a pledge or renunciation of a pledge, seizure, validation and lifting of seizure, shall be entered at the request of one of the parties to the act.

For entry of notices following a court decision that has become final, the registrar of the court shall communicate within 15 days as from the date of such decision to the body responsible for industrial property a full and free copy of decisions relating to the existence, extent and exercise of rights attaching to the protection provided under this Title.

The formalities to be complied with and the elements to be attached to the requests for entry shall be laid down by regulation.

#### **Article 127**

Any concerned person may obtain an extract from the National Industrial Designs and Models Register.

#### **Section II - Seizure**

#### **Article 128**

Seizure of an industrial design or model shall be effected on the basis of an order issued by the presiding judge acting in chambers notified to the owner of the industrial design or model, to the

body responsible for industrial property and to any persons holding rights in the industrial design or model.

Notification of seizure shall render any subsequent modification of the rights attaching to the industrial design or model inapplicable to the execution creditors.

On pain of nullity of seizure, the execution creditor shall be required, within a period of 15 days as from the date of the seizure order, to institute court proceedings for validation of the seizure and for the purpose of offering the industrial design or model for sale.

### **Section III - Miscellaneous Provisions**

#### **Article 129**

The exclusive right of exploitation attaching to a protected industrial design or model under this Title shall expire at the end of a maximum period of 15 years as from the date of the initial deposit.

#### **Article 130**

The holder of an industrial design or model may, at any time, renounce protection of his industrial design or model by means of a written declaration addressed to the body responsible for industrial property.

Renunciation may be limited to a part only of the industrial designs or models if the deposit includes more than one industrial design or model.

Where the industrial design or model is an object of joint ownership, renunciation may be effected only if requested by all the joint owners.

If real licensing or mortgage rights have been entered in the National Industrial Designs and Models Register, the declaration renouncing the registration shall be admissible only if accompanied by the consent of the holders of the entered rights.

#### **Article 131**

Any concerned person, including the public prosecutor, may invoke the nullity of the registration of an industrial design or model made in violation of the provisions of Articles 104, 105 and 113 above.

### **Chapter VI Publication of Industrial Designs and Models**

#### **Article 132**

The body responsible for industrial property shall publish an official catalogue of all registered industrial designs or models. The acts referred to in the first paragraph of Article 126 above shall be shown therein.

**TITLE V**  
**TRDEMARKS AND SERVICE MARKS Chapter I**  
**Scope of Application**

**Article 133**

For the purposes of this Law, a trademark or a service mark means a sign capable of graphic representation which serves to distinguish the goods or services of a natural or legal person.

The following, in particular, may constitute such a sign:

- (a) Denominations in all forms, such as: words, combinations of words, surnames and geographical names, pseudonyms, letters, numerals, abbreviations;
- (b) Figurative signs such as: devices, labels, seals, selvages, reliefs, holograms, logos, synthesized images; shapes, particularly those of a product or its packaging or those that identify a service; arrangements, combinations or shades of color.

**Article 134**

The distinctive nature of a sign that is capable of constituting a mark shall be assessed in relation to the designated goods or services.

The following shall not be of a distinctive nature:

- (a) Signs or names which in everyday or technical language simply constitute the necessary, generic or usual designation of the goods or services;
- (b) Signs or names which may serve to designate a feature of the product or service, particularly the type, quality, quantity, purpose, value, geographical origin or time of production of the goods or furnishing of the service;
- (c) Signs exclusively constituted by the shape imposed by the nature or function of the product or which give the product its substantial value.

**Article 135**

The following may not be adopted as a mark or an element of a mark:

- (a) Signs which reproduce the effigy of his Majesty the King or of a member of the royal family, armorial bearings, flags, official insignia or emblems of the Kingdom or of other member countries of the Paris Union, abbreviations or names of the United Nations and of the international organizations adopted by those organizations or those already subject to international agreements in force to ensure their protection, national or foreign decorations, Moroccan or foreign metallic or fiduciary money, and any imitation from a heraldic point of view.

The signs referred to in (a) above may be registered, however, by the body responsible for industrial property subject to production of an authorization from the competent authorities.

(b) Signs contrary to public policy or morality or whose use is prohibited by law;

(c) Signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services.

#### **Article 136**

There shall be prohibited from entering into the territory of the Kingdom, and may not be admitted to economic customs treatment nor put into circulation, any natural or manufactured product bearing on itself or on the packaging, crates, bales, envelopes, strips, labels, a mark, a name, a sign, an imprint, a label or a decorative pattern including a reproduction or a drawing of the signs referred to in Article 135(a) above, subject to producing authorization from the competent authorities.

#### **Article 137**

Signs may not be adopted as marks where they infringe earlier rights, particularly:

(a) an earlier mark that has been registered or that is well known within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property;

(b) the name or style of a company ,where there is a risk of confusion in the public mind;

(c) a trade name or sign board known throughout the national territory, where there is a risk of confusion in the public mind;

(d) a protected appellation of origin;

(e) rights protected by the Law on the Protection of Literary and Artistic Works;

(f) rights deriving from a protected industrial design or model;

(g) the personality rights of another person, particularly his surname, pseudonym or likeness;

(h) the name, image or repute of a local authority.

#### **Article 138**

The nature of the goods or services for which a mark is intended shall in no event prevent the filing and validity of such mark.

#### **Article 139**

A mark may be collective or individual. A trademark or service mark shall be optional unless otherwise provided by statutory provisions.

**Chapter II**  
**Right to Marks and Filing and Registration Procedure**  
**Section I - Right to Marks**

**Article 140**

Ownership of a mark shall be acquired by registration. A mark may be acquired under joint ownership.

**Article 141**

The provisions of Articles 77 to 80 above shall apply to trademarks and service marks.

**Article 142**

Where registration has been applied for, either fraudulently with respect to the rights of another person or in violation of a statutory or contractual obligation, any person who believes he has a right in the mark may claim ownership by legal proceedings.

Except where the applicant has acted in bad faith, action claiming ownership shall be barred three years after the date of registration of the mark in the national trademark register referred to in the first paragraph of Article 157 below.

**Article 143**

Only marks that have been regularly filed and registered by the body responsible for industrial property shall enjoy the protection afforded by this Law as from the date of their filing.

The registration of a trademark shall imply the establishment of an industrial property title known as a "trademark or service mark registration certificate", filed and registered in the form and under the conditions provided in Section II of this Chapter.

**Section II -**  
**Trademark Filing and Registration Procedure**

**Article 144**

Any person wishing to obtain a trademark registration certificate shall be required to file with the body responsible for industrial property a trademark or service mark application file under the conditions set out in this Section. The application may be filed by the applicant or by his representative.

The trademark application file shall comprise as of the date of its filing:

(a) a request for registration of a mark of which the contents shall be laid down by regulation and which shall give a clear and full enumeration of the goods or services for which registration of the mark is sought in accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks;

- (b) four reproductions of the model of the mark in black and white;
- (c) four reproductions of the model of the mark in color, where color is claimed;
- (d) the film enabling the mark to be reproduced;
- (e) proof of payment of the prescribed fees.

A trademark application file that does not comprise the elements referred to in (a), (b), (c), (d) and (e) above shall not be admissible at the actual time of filing.

The formalities to be complied with and the elements to be attached to the documents referred to in (a), (b), (c), (d) and (e) above shall be laid down by regulation.

Where a trademark application file includes the elements referred to in (a), (b), (c), (d) and (e) above, the request for registration of a mark as provided for in (a) above shall be entered in chronological order of filing in the national trademark register of marks referred to in the first paragraph of Article 157 below, together with the date and a filing number.

#### **Article 145**

Where, on the date of filing, the application file for a trademark does not comprise one or more of the elements to be attached to the documents referred to in (a), (b), (c), (d) and (e) above, of which the list shall be laid down by regulation pursuant to the fourth paragraph of Article 144 above, the applicant or his representative shall have a period of three months as from the filing date in order to regularize the file.

A file that is regularized within the afforded time limit shall maintain the initial filing date.

The three-month period is a clear time limit. If the final day is a public holiday or a non-working day, the period shall be extended to the following working day.

#### **Article 146**

A receipt establishing the date of furnishing of the elements referred to in the second and fourth paragraphs of Article 144 above shall be

issued to the applicant or his representative immediately after filing of the application.

#### **Article 147**

Within a period of three months as from the filing date of the trademark, the applicant or his representative may, on a reasoned request, ask for rectification of linguistic errors or mistakes in transcription, together with any substantive errors noted in the elements and documents filed, with the exception of the model of the filed trademark and the classes designated in the application for the registration, which may not be modified. No rectification can be effected beyond the above mentioned time limit.

The request for rectification referred to in the first paragraph of this Article shall be submitted in writing and shall contain the subject matter of the proposed rectifications.

#### **Article 148**

An application for registration shall be rejected if:

- (1) it does not comply with the provisions under (a) and (b) of Article 135 above;
- (2) it has not been regularized within the three-month period under Article 145 above.

The rejection of an application for trademark registration shall be reasoned and shall be notified to the applicant or his representative by registered letter with advice of delivery. The notice of such rejection shall be entered in the national register of marks referred to in the first paragraph of Article 157 below.

#### **Article 149**

Where an application for trademark registration is not subject to rejection under the provisions of Article 148 above, the trademark shall be registered by the body responsible for industrial property without prior substantive examination.

The date of registration shall be that of the filing.

The filing shall be registered in the national register of marks referred to in the first paragraph of Article 157 below.

#### **Article 150**

Following the registration referred to in Article 149 above, a report establishing the filing and stating the date of such filing and the elements attached shall be drawn up by the body responsible for industrial property together with a trademark registration certificate accompanied by the model of the registered trademark. The report and the registration certificate shall be handed or notified to the applicant or his representative.

#### **Article 151**

Any concerned person may obtain, on written request, an official copy of the trademark on production of the model of the registered trademark.

### **Chapter III The Effects of Trademark Registration**

#### **Article 152**

The registration of a trademark shall have effect as from the filing date for an infinitely renewable period of ten years. It may be renewed subject to the same formalities and conditions as those set out in Section II of Chapter II of this Title. Renewal of a registration shall be effected within the six months preceding expiry of its term of validity.

However, a six-month period of grace as from expiry of the term of validity shall be afforded to the applicant in order to effect such renewal. Renewal shall begin on expiry of the term of validity of the registration.

If the request for renewal concerns some only of the goods or services covered by the registration, the registration of the trademark shall be renewed solely for those goods or services.

The registration of a mark may be renewed if it comprises neither modification of the model of the mark nor extension to goods or services other than those designated in the application for initial registration of the mark.

Any modification of the sign or extension of the list of designated goods or services shall be the subject of a new filing.

#### **Article 153**

The registration of a mark shall confer on its owner a right of property in that mark for the goods and services he has designated.

#### **Article 154**

The following shall be prohibited, unless authorized by the owner:

(a) The reproduction, use or affixing of a mark, even with the addition of words such as: "formula, manner, system, imitation, type, method" or the use of a reproduced mark for goods or services that are identical to those covered by the registration;

(b) The suppression or modification of a duly affixed mark.

#### **Article 155**

The following shall be prohibited, unless authorized by the owner, if there is a likelihood of confusion in the mind of the public:

(a) The reproduction, use or affixing of a mark or use of a reproduced mark for goods or services that are similar to those covered by the registration;

(b) The imitation of a mark and the use of an imitated mark for goods or services that are identical or similar to those covered by the registration.

### **Chapter IV**

#### **Transfer and Loss of Rights**

##### **Section I - General Provisions**

#### **Article 156**

The rights under a registered mark may be transferred in whole or in part.

They may be subject, in whole or in part, to the granting of an exclusive or non-exclusive license or to pledging.

The rights conferred by registration of a mark may be invoked against a licensee who fails to respect a limitation of his license imposed under the preceding paragraph.

Subject to the provisions of Article 142 above, the transfer of rights referred to in the first paragraph of this Article shall not affect rights acquired by third parties before the date of transfer.

Acts involving transfer or licensing as referred to in the first two paragraphs above, shall be recorded in writing, on pain of nullity.

#### **Article 157**

All acts transferring, modifying or affecting the rights attaching to a registered mark shall only have effect against third parties if entered in a register known as the "National Register of Marks" kept by the body responsible for industrial property.

However, prior to entry, an act shall be invocable against others who have acquired rights after the date of such act, but who were aware of that act when acquiring those rights.

Acts modifying the ownership of a registered mark or the enjoyment of the rights attaching thereto, such as assignment, licensing, constitution or transfer of a mortgage right or renunciation of the latter, seizure, validation and lifting of seizure, shall be entered with the body responsible for industrial property at the request of one of the parties to the act.

For the entry of the notices resulting from a court decision that has become final, the registrar shall address within 15 days as from the date of the decision to the body responsible for industrial property a full and free copy of the decisions relating to the existence, extent and exercise of the rights attaching to the protection laid down in this Title.

The formalities to be complied with and the elements to be attached to the requests for entry shall be laid down by regulation.

#### **Article 158**

Any concerned person may obtain an extract from the National Register of Marks.

### **Section II - Seizure**

#### **Article 159**

Seizure of a trademark or service mark shall be effected on the basis of an order by the presiding judge acting in chambers notified to the owner of the mark, to the body responsible for industrial property and to any persons holding rights in such mark.

Notification of seizure shall render any subsequent modification of the rights attaching to the mark inapplicable to the execution creditors.

On pain of nullity of seizure, the execution creditor shall be required, within a period of 15 days as from the date of the seizure order, to institute court proceedings for validation of the seizure and for the purpose of offering the mark for sale.

### **Section III - Miscellaneous Provisions**

#### **Article 160**

The owner of a registered mark may, at any time, by means of a written declaration, renounce the effects of such registration for all or some of the goods or services covered by the registration.

Where a mark is an object of joint ownership, renunciation may be effected only if requested by all the joint owners.

If real licensing or mortgage rights had been entered in the National Register of Marks, the renunciation declaration shall be admissible only if accompanied by the consent of the holders of the rights entered.

Renunciation shall be entered in the National Register of Marks.

#### **Article 161**

Any concerned person, including the public prosecutor, may request nullity of the registration of a mark effected in violation of the provisions of Articles 133 to 135 above.

Only the holder of an earlier right may institute nullity proceedings on the basis of Article 137 above. However, his action shall not be admissible if the mark has been filed in good faith and if he has tolerated use of it for a period of five years.

A decision to annul shall have absolute effect.

#### **Article 162**

The owner of a well-known mark within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property may claim cancellation of the registration of a mark liable to lead to confusion with his own mark. Such nullity proceedings shall be prescribed five years after the registration date of the mark, unless registration was applied for in bad faith.

#### **Article 163**

An owner who has not put his mark to genuine use in connection with the goods or services covered by the registration during an uninterrupted period of five years, without good reason, shall be liable to revocation of his rights.

The following shall be assimilated to such use:

(a) Use made with the consent of the owner of the mark or, in the case of a collective mark, in compliance with the regulations;

- (b) Use of the mark in a modified form which does not alter its distinctive nature;
- (c) Affixing of the mark on goods or their packaging, exclusively for export.

Revocation may be requested in legal proceedings by any concerned person. If the request concerns only a part of the goods or services covered by the registration, revocation shall extend to the goods and services concerned only.

Genuine use of the mark begun or resumed after the five-year period referred to in the first paragraph of this Article shall not constitute an obstacle thereto if it has been undertaken during the three months prior to the request for revocation and after the owner had gained knowledge of the possibility of a request for revocation.

The burden of proving exploitation shall rest with the owner of the mark for which revocation is requested. Proof may be furnished by any means.

Revocation shall take effect as of the date of expiry of the five-year period laid down in the first paragraph of this Article. It shall have absolute effect.

#### **Article 164**

The owner of a mark shall also be liable to revocation of his rights if, in consequence of his own acts, the mark has become:

- (a) the common name in trade for a product or service;
- (b) liable to mislead the public, particularly as regards the nature, quality or geographical origin of the product or service.

#### **Article 165**

Any final court decision ordering the annulment or revocation of a mark shall be entered in the National Register of Marks.

### **Chapter V**

#### **Collective Marks and Collective Certification Marks Section I - Scope of Application**

##### **Article 166**

A mark shall be known as a collective mark if it may be used by any person who complies with regulations for use issued by the owner of the registration.

A collective certification mark shall be affixed to goods or services that display, in particular, with regard to their nature, properties or qualities, the characteristics detailed in the respective regulations.

### **Section II**

#### **Miscellaneous Provisions**

##### **Article 167**

The provisions of Chapters II, III and IV of this Title shall apply to collective marks and to collective certification marks subject to the special provisions below.

#### **Article 168**

The protection afforded by this Chapter shall not be enjoyed by collective marks and collective certification marks where the regulations for their use are contrary to morality or public policy.

#### **Article 169**

A mark shall be designated in the application for registration referred to in (a) of the second paragraph of Article 144 above as a collective mark or as a collective certification mark.

The application file for a collective mark or a collective certification mark must also include a copy of the regulations governing the use of the collective mark or of the collective certification mark, duly certified by the applicant.

Such copy must be provided either on the same day as the filing of the application or, where appropriate, under the conditions and within the time limit provided in Article 144 above.

The owner of the collective mark or the collective certification mark may, at any time, communicate in writing to the body responsible for industrial property any change made to the regulations governing the mark. A notice of such changes shall be entered in the National Register of Marks.

#### **Article 170**

The regulations referred to in the first paragraph of Article 166 above shall set out the common characteristics or qualities of the goods or services that the mark is intended to designate and the conditions under which the mark may be used, together with the persons authorized to use it.

#### **Article 171**

A collective certification mark may be filed only by a legal person who is neither the manufacturer nor the importer nor the seller of the goods or services.

#### **Article 172**

Use of a collective certification mark shall be open to all persons, other than the owner, who supply goods or services satisfying the conditions laid down by the regulations.

#### **Article 173**

A collective certification mark may not be subject to assignment, pledge or any measure of enforcement. However, the competent administration may authorize transfer of the registration of a

collective certification mark if the transferee undertakes effective control of use of the mark. Transfer shall be entered in the National Register of Marks.

**Article 174**

Where a collective certification mark has been used and has been ceased to be protected by law, it may be neither registered nor used for any purpose whatsoever during a period of ten years.

**Article 175**

Invalidity of the registration of a collective certification mark may be ordered on a petition by the public prosecutor or at the request of any concerned person if the mark does not meet any of the requirements of this Chapter.

The invalidity decision shall have absolute effect.

**Chapter VI  
Publication of Marks****Article 176**

The body responsible for industrial property shall publish an official catalogue of all trademarks and service marks, collective marks and collective certification marks that have been registered. The acts referred to in the first paragraph of Article 157 above shall also be entered therein.

**TITLE VI  
TRADE NAMES, INDICATIONS OF SOURCE, APPELLATIONS OF ORIGIN AND UNFAIR  
COMPETITION****Chapter I  
Trade Names****Article 177**

"Trade name" means the distinctive designation or the distinctive sign under which an enterprise is operated.

**Article 178**

A name or a designation which, by its nature or by the use that may be made of it, is contrary to morality and public policy or which could mislead trade circles or the public as to the nature of the enterprise designated under such name may not constitute a trade name.

**Article 179**

A trade name, whether or not part of a mark, shall be protected by the provisions of Law No. 15-95 Constituting the Commercial Code against any subsequent use of the trade name by a third party, whether in the form of a trade name or of a trademark or service mark if it is liable to mislead the public.

**Chapter II  
Indications of Source and Appellations of Origin**

#### **Article 180**

"Indication of source" means the expression or sign used to indicate that a product or a service originates in a country or group of countries, a region or a specific place.

#### **Article 181**

An appellation of origin shall consist of the geographical name of a country, region or locality that serves to designate a product originating therein, the quality or characteristics of which are due to the geographical environment, including both natural and human factors.

#### **Article 182**

The following shall be unlawful:

- (a) The direct or indirect use of a false or deceptive indication concerning the origin of a product or a service, the identity of the producer, manufacturer or trader;
- (b) The direct or indirect use of a false or deceptive appellation of origin, or the imitation of an appellation of origin, even if the true origin of the product is shown or if the appellation is used in translated form or accompanied by terms such as "kind", "make", "imitation", or the like.

#### **Article 183**

Public proceedings to suppress unlawful acts as referred to in Article 182 may be instituted by the public prosecutor. Proceedings for damages may also be instituted by any injured party, natural or legal person, association or union, particularly of producers, manufacturers or traders able to correctly identify their goods or services with the indication or appellation concerned, or by the

associations that represent them therein, without prejudice to civil remedies or claims to withholding measures.

### **Chapter III Unfair Competition**

#### **Article 184**

Any act of competition contrary to honest practice in industrial or commercial matters shall constitute an act of unfair competition.

The following, in particular, shall be prohibited:

- (1) All acts of such a nature as to create confusion by any means whatsoever with the establishment, the products or the industrial or commercial activities of a competitor;
- (2) False allegations in the course of trade of such a nature as to discredit the establishment, products or industrial or commercial activities of a competitor;

(3) Indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of the goods.

#### **Article 185**

Acts of unfair competition shall be subject only to civil proceedings for cessation of the acts that constitute unfair competition and for damages.

### **TITLE VII TEMPORARY PROTECTION AT EXHIBITIONS AND INDUSTRIAL AWARDS**

#### **Chapter I Temporary Protection**

##### **Article 186**

Temporary protection shall be granted to patentable inventions, improvements or additions relating to a patented invention, to layout-designs (topographies) of integrated circuits, to industrial designs and models and to trademarks and service marks for goods or services exhibited for the first time at official or officially recognized international exhibitions held on the territory of one of the countries of the International Union for the Protection of Industrial Property.

##### **Article 187**

Such protection, of which the term shall be set at six months as from the date of the official opening of the exhibition, shall have the effect of maintaining for the exhibitors or their successors in title the right to claim during such period the protection that their inventions, layout-designs (topographies) of integrated circuits, industrial designs and models or marks would legally enjoy under the provisions of this Law.

The formalities to be complied with by exhibitors in order to enjoy temporary protection shall be laid down by regulation.

##### **Article 188**

The term of temporary protection shall not be increased by the priority periods referred to in Article 7 above.

#### **Chapter II Industrial Awards Section I - Right to Protection**

##### **Article 189**

The protection established by the following provisions may be enjoyed only by industrial awards, comprising prizes, medals, commendations, titles or attestations of any kind of distinction obtained in the exhibitions referred to in Article 186 above.

Industrial or commercial use of the industrial awards listed above may be made by their holders or their successors in title only after registration with the body responsible for industrial property in the register referred to in Article 199 below.

#### **Article 190**

Industrial awards shall be issued either personally or collectively.

Where an award is issued personally, industrial or commercial use of the award may be made only by the person who has obtained it or by his successors in title. In the latter case, the name of the holder of the award shall be shown in clearly visible characters.

Where an award has been issued collectively, industrial or commercial use of the award may be made either by the group concerned or by each of the members of such group on condition that the name of the group that has obtained it be explicitly mentioned in characters just as clear as those of the award itself.

An award issued to an industrial or commercial enterprise may be used industrially or commercially only by the owner of such enterprise or by his successors in title.

Industrial or commercial use may not be made of an award issued to an employee except on condition that the holder indicates that it is an employee award and mentions the name of the enterprise to which he belonged when he obtained it. The owner of the enterprise may also not make use of the award except on condition that he indicate that it is an employee award.

Where an industrial award has been issued with respect to a specific product, industrial or commercial use may be transferred together with the product.

#### **Article 191**

Industrial awards that reproduce the signs referred to in Article 135(a) above without the authorization of the authorities competent for their use shall not enjoy the protection afforded by this Law.

### **Section II - Filing and Registration Procedure for Industrial Awards**

#### **Article 192**

Any person wishing to enjoy the protection afforded by Article 189 above shall be required to file with the body responsible for industrial property an application for an industrial award.

The application file for an industrial award shall contain on the date of its filing:

- (a) a request for registration of an industrial award mentioning the subject matter of the industrial award, of which the contents shall be laid down by regulation;
- (b) two certified copies of the industrial award title;

(c) proof of payment of the prescribed fees.

If the industrial award application file does not contain the elements provided in (a), (b) and (c) above it shall not be admissible at the time of filing.

The formalities to be complied with and the elements to be attached to the documents referred to in (a), (b) and (c) shall be laid down by regulation.

Where the industrial award application file contains the elements referred to in (a), (b) and (c) above, the request for registration of an industrial award as provided for in (a) above shall be entered, in chronological order of filing, in the national register of industrial awards referred to in the first paragraph of Article 199 below, together with a date and a filing number.

#### **Article 193**

Where, on the date of filing, the industrial award application file does not contain one or more of the elements to be attached to the documents referred to in (a), (b) and (c) above, of which the lists shall be laid down by regulation pursuant to the fourth paragraph of Article 192 above, the applicant or his representative shall have a three-month period as from the filing date in order to regularize the file.

A file regularized within the prescribed time limit shall maintain the initial filing date.

The three-month period is a clear time limit. If the last day is a public holiday or a non-working day, the time limit shall be extended to the following working day.

#### **Article 194**

A receipt establishing the date of submitting the elements referred to in the second and fourth paragraphs of Article 192 above shall be issued immediately after filing of the application or notified to the person awarded the industrial award or his representative.

#### **Article 195**

Within three months as from the filing date of the industrial award file, the person issued such award or his representative may, with a reasoned request, seek rectification of linguistic errors or errors of transcription, together with substantive errors, noted solely in the request for registration referred to in (a) of the second paragraph of Article 192 above. No rectification may be carried out beyond the above mentioned time limit.

The request for rectification referred to in the preceding paragraph shall be submitted in writing and shall contain the subject matter of the proposed rectifications.

#### **Article 196**

Requests for registration of an industrial award shall be rejected if:

- (1) they have not been regularized within the three-month period referred to in Article 193 above;
- (2) they reproduce the signs referred to in Article 135 (a) above.

The signs referred to in (2) above may, however, be registered by the body responsible for industrial property subject to submission of the authorization of the competent authorities.

Any rejection of a request for registration of an industrial award shall be reasoned and shall be notified to the applicant or his representative by registered letter with advice of delivery. A notice of rejection shall be entered in the national register of industrial awards referred to in the first paragraph of Article 199 below.

#### **Article 197**

Where a request for registration of an industrial award is not subject to rejection pursuant to Article 196 above, one of the copies of the industrial award title referred to in (b) of the second paragraph of Article 192 above shall be returned to the holder of the award or his representative, bearing the date of filing and its chronological registration number.

The other copy, on which the same references shall be transcribed, shall be kept by the body responsible for industrial property.

### **Section III - Miscellaneous Provisions**

#### **Article 198**

Any advertising concerning an industrial award shall state the exact nature of the award, the organism that issued it and the date of the award.

#### **Article 199**

The body responsible for industrial property shall keep a special register known as the "National Register of Industrial Awards" in which shall be entered all registrations relating to industrial awards and all operations relating thereto.

Any concerned person may obtain, on a written request, a copy or an extract of the registrations and entries contained in the National Register of Industrial Awards. However, the issue of such copies or extracts of entries in that Register may be communicated free of charge to public administrations.

### **Section IV - Publication of Industrial Awards**

#### **Article 200**

The body responsible for industrial property shall publish an official catalogue of all registered industrial awards.

## **TITLE VIII LEGAL PROCEEDINGS**

### **Chapter I General Provisions**

#### **Article 201**

Any violation of the rights of the owner of a patent, a certificate of addition, a certificate of a layout-design (topography) of an integrated circuit, a registration certificate for an industrial design or model or a registration certificate for a trademark or service mark, as defined respectively in Articles 53, 54, 99, 123, 124, 154 and 155 above shall constitute an infringement. The offering for sale, putting on the market, reproduction, use, holding with a view to use or putting on the market of an infringing product, where such acts are committed by a person other than the manufacturer of the infringing product, shall imply the liability of the person committing them only if such acts have been committed in full knowledge of the facts.

#### **Article 202**

Infringement proceedings shall be instituted by the owner of the patent, certificate of addition, certificate of a layout-design (topography) of an integrated circuit, registration certificate for an industrial design or model or registration certificate for a trademark or service mark.

However, the beneficiary of an exclusive right of working may, except as otherwise stipulated in the licensing contract, institute infringement proceedings if, after notice transmitted by a bailiff or the court registrar, the owner does not institute such proceedings.

The owner shall be entitled to take part in infringement proceedings instituted by the licensee, in accordance with the preceding paragraph.

Any licensee shall be entitled to take part in the infringement proceedings instituted by the owner in order to obtain compensation for an injury he has personally sustained.

#### **Article 203**

Where infringement proceedings are brought before the court, the president of the court, acting in chambers, may provisionally enjoin, under penalty of a daily fine, the continuation of the allegedly infringing acts or make continuation subject to the furnishing of a guarantee to cover indemnification of the owner of the industrial property title or the licensee.

The request for injunction or for furnishing of a guarantee shall only be granted if the substantive proceedings appear well-founded and are instituted within a maximum period of 30 days as from the day on which the owner became aware of the facts on which the proceedings are based.

The judge may condition the injunction on the furnishing by the plaintiff of a guarantee to cover possible indemnification of damages suffered by the defendant if the infringement proceedings are subsequently judged to be unfounded.

#### **Article 204**

The court of the place of real or elected domicile of the defendant or the place where his representative is established or the court of the place where the body responsible for industrial property is established shall be competent if the defendant is domiciled abroad.

Proceedings involving both matters of trademarks and matters of designs or models or of unfair competition shall be heard by the court.

#### **Article 205**

Public proceedings may be instituted only on a complaint by the injured party, save for violation of the provisions set out in Articles 24(a), 113 and 135(a) and (b) above, for which the public prosecutor shall be competent.

The criminal court may not act until the court hearing the proceedings to establish the reality of the damages has passed a final sentence. The exceptions presented by the defendant concerning nullity of the industrial property title or issues relating to ownership of such title may not be raised before the criminal court.

Civil and criminal proceedings under this Title shall be prescribed three years after the acts on which they are based.

The institution of civil proceeding shall suspend the period of prescription for the criminal proceedings.

#### **Article 206**

Any product illegally bearing a trademark, service mark or trade name shall be seized on import, at the request of the public prosecutor or of any other concerned person, in application of an order given by the president of the court, acting in chambers. The same shall apply in respect to products bearing false indications of the origin of goods or the identity of the producer, manufacturer or trader.

#### **Article 207**

Acts preceding the entry of the grant of patents, certificates of addition, certificates for layout-designs (topographies) of integrated circuits or for the registration of industrial designs or models or the registration of trademarks or service marks in the registers kept by the body responsible for industrial property shall not justify the institution of proceedings under this Law.

Where the acts are subsequent to such entries or registrations, their authors may plead their good faith if they are able to produce evidence thereof.

#### **Article 208**

Persons sentenced under the provisions of this Title may, in addition, be deprived for a maximum period of five years of the right to be members of the professional chambers.

#### **Article 209**

The court shall order publication of final decisions given pursuant to the provisions of this Law.

**Chapter II**  
**Patents**  
**Section I - Civil Proceedings**

**Article 210**

The holder of a compulsory license, as referred to in Articles 60 and 66 above, may institute infringement proceedings if, after formal notice, the owner of the patent does not institute such proceedings.

The holder of an ex officio license as referred to in Articles 69, 74 and 75 above, may institute infringements proceedings if, after formal notice, the owner does not institute such proceedings.

**Article 211**

The holder of an application for a patent or an application for a certificate of addition relating to a main patent, or the holder of a patent or of a certificate of addition relating to a main patent, shall have the possibility of furnishing proof by any means whatsoever of the infringement of which he claims to be a victim.

He shall further be entitled, on an order given by the president of the court of the place of infringement, to direct a bailiff or a registrar to proceed with a detailed description, with or without effective seizure, of the allegedly infringing products or processes. The description may be carried out with the assistance of a qualified expert.

Execution of such order may be subjected to security to be furnished by the plaintiff.

In that same order, the president of the court may authorize the registrar, assisted by a qualified expert, to carry out all necessary recordings in order to ascertain the origin, nature and scope of the infringement.

The same right shall be enjoyed by the holder of an exclusive right of working under the conditions set out in the second paragraph of Article 202 of this Law and, under the conditions set out in Article 210 above, by the holder of a compulsory license or an ex officio license.

If the plaintiff fails to institute proceedings before the court within a maximum term of 30 days as from the day of execution of the order, the detailed description, with or without seizure, shall automatically be void, without prejudice to any damages.

**Article 212**

At the request of the injured party, and where such measure is necessary to prevent continuing infringement, the court may order confiscation, in favor of the plaintiff, of the articles recognized as constituting an infringement, which are the property of the infringer, on the date of the entry into force of the prohibition and, where appropriate, of the devices or means specifically intended for committing the infringement.

The value of the articles confiscated shall be taken into account when computing the compensation to be awarded to the beneficiary of the decision.

## **Section II - Criminal Proceedings**

### **Article 213**

Any violation made knowingly to the rights of the owner of a patent as defined in Articles 53 and 54 above shall constitute an infringement and shall be punishable by a penalty of between two and six months imprisonment and a fine of between 50,000 and 500,000 dirhams or one only of those two penalties.

In the event of repetition of the offense, the penalties may be doubled.

There shall be deemed to be repetition, within the meaning of this Article, if an irrevocable sentence for identical acts has been given against the accused party within the preceding five years.

The court may also order the destruction of articles recognized as infringing, which are the property of the infringer, and the destruction of those devices or means specially intended for carrying out the infringement.

### **Article 214**

The same penalties shall apply to infringers who have knowingly received, displayed, placed on sale or sold, introduced or exported allegedly infringing products. The same shall apply to any assistance provided knowingly to the person committing the infringements referred to above.

### **Article 215**

The penalties provided for in Articles 213 and 214 above shall be increased to between six months and two years imprisonment and a fine of between 100,000 and 500,000 dirhams or one of those two penalties only if the infringer is an employee who has worked in the patentee's workshops or establishment.

The same penalties shall be incurred by an employee who has associated himself with the infringer after having given him knowledge of the processes described in a patent.

Proceedings against the employee may be instituted in accordance with Article 447 of the Penal Code.

### **Article 216**

Notwithstanding the penalties provided for in special laws, any person who has given any information, indications or descriptions whatsoever with respect to patents or certificates of addition relating to a main patent or to layout-designs (topographies) of integrated circuits for which an application has been filed by them or any other person, and which have not yet been granted, either by means of addresses or lectures in public places or meetings, or by writings,

printed matter sold or distributed, put on sale or displayed in public places or meetings, or by means of panels or posters displayed in public view shall be liable to a fine of between 50,000 and 500,000 dirhams.

In the event of a repeat offense, imprisonment of between three months and two years shall be ordered in addition to the fine.

#### **Article 217**

Notwithstanding, where appropriate, the heavier penalties provided for with regard to violation of State security, any person who knowingly violates one of the prohibitions laid down in Article 42

above shall be liable to a fine of between 100,000 and 500,000 dirhams. If the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

### **Chapter III Layout-Designs (Topographies) of Integrated Circuits**

#### **Article 218**

The provisions of Chapter II of this Title shall apply to civil and criminal proceedings for infringement of layout-designs (topographies) of integrated circuits.

### **Chapter IV Industrial Designs and Models Section I - Civil Proceedings**

#### **Article 219**

The holder of an industrial design or model shall have the possibility of furnishing proof by any means whatsoever of the infringement of which he claims to be a victim.

He shall be further entitled, on an order given by the president of the court of the place of the infringement, to direct a bailiff or a registrar to proceed with a detailed description, with or without effective seizure, of the allegedly infringing products.

The description may be carried out with the assistance of a qualified expert.

Execution of such order may be subjected to a security on the part of the plaintiff.

In the same order, the president of the court may authorize a registrar, assisted by a qualified expert, to carry out an enquiry to ascertain the origin, nature and scope of the infringement.

The same right shall be enjoyed by the licensee of an exclusive right of working under the conditions laid down in the second paragraph of Article 202 above.

If the plaintiff fails to institute proceedings before a court within a maximum term of 30 days as from the day of execution of the above order, the detailed description, with or without seizure, shall automatically be void, without prejudice to any damages.

## **Article 220**

At the request of the injured party, and where such measure is necessary to prevent continuing infringement, the court may order confiscation, in favor of the petitioner, of the articles recognized as constituting an infringement, which are the property of the infringer, on the date of entry into force of the prohibition and, where appropriate, of the devices or means specifically intended for committing the infringement.

The value of the articles confiscated shall be taken into account when computing the compensation to be awarded to the beneficiary of the decision.

## **Section II - Criminal Proceedings**

### **Article 221**

Any person who has knowingly infringed the rights of the owner of an industrial design shall be liable to a fine of between 25,000 and 250,000 dirhams.

The penalty laid down in the first paragraph above shall be increased to a fine of between 50,000 and 250,000 dirhams and a term of prison of between one month and six months if the offender is a person who has worked on behalf of the injured party.

The penalties provided in the preceding paragraph shall also be incurred if the accused party is committing a repeat offense in view of the fact that he has been sentenced within the preceding five years by a final decision given for identical acts.

The court may also order destruction of the articles recognized as infringing, which are the property of the infringer, and of the devices or means specially intended for committing the infringement.

## **Chapter V Trademarks and Service Marks Section I – Civil Proceedings**

### **Article 222**

The owner of a registered mark or the holder of an exclusive right of working shall be entitled, on an order given by the president of the court, to direct a bailiff or a registrar to proceed with a detailed description, with or without the taking of samples, or to proceed with the seizure of the goods or services that he claims are marked, offered for sale, delivered or furnished to his prejudice in violation of his rights.

Such description may be carried out with the assistance of a qualified expert.

In the same order, the president of the court may authorize any enquiry required to ascertain the origin, nature and scope of the infringement.

The execution of such order may be subject to security by the plaintiff to cover any possible indemnification of prejudice suffered by the defendant if the infringement proceedings subsequently prove to be without grounds.

If the petitioner fails to institute proceedings before the court within a maximum term of 30 days as from the day of execution of the above order, the detailed description or the seizure will automatically be void, without prejudice to any damages.

#### **Article 223**

In those cases where substitution of a product or a service for that which has been requested under a registered mark is to be ascertained, the officer of the registry shall be required to show the order referred to in Article 222 above only after delivery of the product or the providing of the service other than the one which is claimed to have been requested and, if the order authorizes more than one ascertaining of substitution, only after the final delivery of the final provision.

#### **Article 224**

At the request of the injured party, and where such measure is necessary to prevent continuing infringement, the court may order confiscation, in favor of the petitioner, of the articles recognized as constituting an infringement, which are the property of the infringer, on the date of entry into force of the prohibition and, where appropriate, of the devices and means specially intended for committing the infringement.

The value of the articles confiscated shall be taken into account when computing the compensation to be awarded to the beneficiary of the decision.

### **Section 1 – Criminal Proceedings**

#### **Articles 225**

Any of the following persons shall be considered infringers and liable to imprisonment of between two and six months and a fine of between 50,000 and 500,000 dirhams or one only of those penalties:

- (1) Persons who have counterfeited a registered mark or who have fraudulently affixed a mark belonging to another person;
- (2) Persons who have used a mark without the authorization of the person concerned, even with the addition of words such as: "formula", "manner", "recipe", "imitation", "type", or any other similar term liable to mislead a purchaser;
- (3) Persons who have held without legitimate reason goods which they knew to bear an infringing mark or a fraudulently affixed mark and who have knowingly sold, put on sale, supplied or offered to supply goods or services under such mark;
- (4) Persons who have knowingly delivered a product or provided a service other than that requested of them under a registered mark.

#### **Article 226**

The following persons shall be liable to between one and six months imprisonment and a fine of between 25,000 and 250,000 dirhams or one only of those two penalties:

(1) Persons who, without counterfeiting a registered mark, have made a fraudulent imitation of it such as to mislead a purchaser or who have made use of a fraudulently imitated mark;

(2) Persons who have made use of a registered mark bearing terms liable to mislead a purchaser as to the nature, substantial qualities, composition or content of active ingredients, type or origin of the article or product thus designated;

(2) Persons who have held without legitimate reason goods which they knew to bear a fraudulently imitated mark or those who knowingly sold, placed on sale or offered to supply goods or services under such mark.

#### **Article 227**

Those persons shall be liable to imprisonment of between one month and three months and a fine of between 50,000 and 500,000 dirhams or one only of those two penalties who have included in their trademarks or service marks signs prohibited under Article 135(a) above without the consent of the competent authorities, persons who have introduced into Morocco, held, placed on sale or sold natural or manufactured products bearing such signs as a mark.

#### **Article 228**

The court may also order the destruction of the articles recognized as infringing which are the property of the infringer together with destruction of the devices or means specially intended for committing the infringement.

#### **Article 229**

The penalties provided under Articles 225 to 228 above shall apply with respect to collective marks and with respect to collective certification marks.

### Chapter VI Trade Names

#### **Article 230**

Any usurpation or fraudulent use of a trade name, whether or not included in a trademark or service mark, shall be punishable by the penalties provided in Article 225 above.

### Chapter VII Indications of Source and Appellations of Origin

#### **Article 231**

The unlawful acts referred to in Article 182 above shall be punishable by the sanctions provided in Article 226 above, notwithstanding any penalties provided for by special laws.

## **Chapter VIII Industrial Awards**

### **Article 232**

The following shall be liable to a term of imprisonment of between two and six months and a fine of between 50,000 and 500,000 dirhams or one of those two penalties only:

(1) Persons who unlawfully and fraudulently claim to have received industrial awards as referred to in Article 189 above or who claim to have received imaginary awards, by affixing them to their products, signboards, advertising, brochures, letters, business papers, packaging or in any other manner;

(2) Persons who, in the same manner, have affixed them to objects other than those for which they had been obtained;

(3) Persons who have made industrial or commercial use of awards other than those provided for in Article 189 above.

### **Article 233**

Persons who have obtained an industrial award and have made an industrial or commercial use of such award without complying with the provisions of Articles 189, 190 and 198 above, shall be liable to a fine of between 25,000 and 250,000 dirhams.

## **TITLE IX TRANSITIONAL PROVISIONS**

### **Article 234**

This Law shall enter into application six months after publication of the texts issued for its application and shall thereby repeal all previous provisions relating to the same subject matter, in particular the Dahir of 21 Sha'ban 1334 (23 June 1916) relating to the protection of industrial property, the Law of 9 Sha'ban 1357 (4 October 1938) relating to the protection of industrial property in the Tangiers zone and the Dahir of 10 Rajab 1359 (14 August 1940) relating to the grant of patents for invention concerning national defense, as modified and supplemented.

### **Article 235**

Rights acquired prior to the date of entry into application of this Law shall be maintained for their remaining term of protection, subject to the following provisions.

### **Article 236**

Applications for patents and certificates of addition relating to such patents filed prior to the date of entry into application this Law, in accordance with the provisions of the Dahir of 21 Sha'ban 1334 (23 June 1916) and the Law of 9 Sha'ban 1357 (4 October 1938) referred to above, shall be examined and the corresponding titles issued in accordance with the provisions and the formalities laid down in that Dahir and that Law.

Applications for registration of utility models filed before the date of entry into application of this Law in accordance with the provisions of the Law of 9 Sha'ban 1357 (4 October 1938) referred to above shall be examined and the corresponding titles issued in accordance with the provisions and the formalities laid down by this Law.

Such applications shall take effect as from the date of their filing.

#### **Article 237**

Patents for invention and certificates of addition relating to such patents granted in accordance with the provisions of the Dahir of 21 Sha'ban 1334 (23 June 1916) and the Law of 9 Sha'ban 1357 (4 October 1938) referred to above, together with utility models, industrial designs and models and trademarks, filed and registered in accordance with the provisions of that Dahir and that Law shall have effect throughout the territory of the Kingdom as from the date of entry into application of this Law.

#### **Article 238**

Marks protected by priority of use in accordance with the provisions of the Dahir of 21 Sha'ban 1334 (23 June 1916) referred to above and the provisions of the Law of 9 Sha'ban 357 (4 October 1938) referred to above, without having been filed and registered under the provisions of that Dahir and that Law, shall be maintained in force with a proviso that, within six months as from the date of entry into application of this Law, application for registration be filed with respect to them in accordance with the provisions of this Law.

#### **Article 239**

Extension of the rights deriving from industrial property titles to the whole territory of the Kingdom shall be enjoyed by licensees, subject to any contrary contractual stipulation.

Failing agreement between the owners of such titles and their licensees, the dispute shall be heard by the court.