

REPUBLIC OF DJIBOUTI
UNITY – EQUALITY – PEACE

PRESIDENCY OF THE REPUBLIC

LAW No. 50/AN/09/6 L
On the Protection of Industrial Property

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**THE NATIONAL ASSEMBLY HAS ADOPTED AND
THE PRESIDENT OF THE REPUBLIC HERBY ENACTS
THE LAW OF WHICH THE CONTENTS ARE AS FOLLOWS:**

WHEREAS the Constitution of September 15, 1992;

WHEREAS Law No. 150/AN/02/4 L of January 31, 2002 on the Accession of the Republic of Djibouti to Intellectual Property Conventions;

WHEREAS Law No. 12/AN/98/4 L of March 11, 1998 on the Reform of State Companies, Semi-Public Companies and Industrial and Commercial Public Establishments;

WHEREAS Law No. 102/01/00/4 L of October 25, 2000 on the Organization and Operation of the Ministry of Trade and Industry;

WHEREAS Decree No. 99-0077/PR/MFEN of June 08, 1999 on the Reform of State companies, Semi-Public companies and Public Establishments;

WHEREAS Decree No. 2001-0012/PR/MEFPCP of January 15, 2001 on the General Rules on Public Accounting;

WHEREAS Decree No. 2008-0083/PRE of March 26, 2008 on the Appointment of the Prime Minister;

WHEREAS Decree No. 2008-0084/PRE of March 27, 2008 on the Appointment of Members of the Government;

WHEREAS Decree No. 2008-0093/PRE of April 03, 2008 establishing the Responsibilities of Ministers;

WHEREAS the National Trade Conference of February 25 to 28, 2008;

WHEREAS the National Craftwork Conference of October 18 to 20, 2009.

The Council of Ministers meeting on January 27, 2009.

WHEREAS Circular No. 171/PAN of June 17, 2009 on the Organization of the Fourth Public Meeting of the First Ordinary Session of 2009.

ADOPTED AT ITS MEETING OF JUNE 21, 2009 THE LAW OF WHICH THE CONTENTS ARE AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

Under the terms of this Law, the protection of industrial property shall refer to invention patents, layout designs (topographies) of integrated circuits, industrial designs, factory marks, trademarks or service marks, trade names, geographical indications and appellations of origin, as well as the repression of unfair competition.

Article 2

Industrial property shall be considered in the broadest sense and shall apply not only to industry and commerce proper and to services but also to any production in the field of agricultural and extractive industries as well as to any manufactured products.

Article 3

The nationals of each of the countries belonging to the International Union for the Protection of Industrial Property shall be entitled to the protection of the industrial property rights provided for in this Law subject to the performance of the conditions and formalities laid down therein.

The same protection shall be afforded to the nationals of countries which are parties to any other treaty concluded in the field of industrial property to which Djibouti is a party that provides for no less favorable treatment for its nationals than that enjoyed by the nationals of said countries.

Article 4

Residents of Djibouti, be they natural persons or legal entities, may themselves file applications for industrial property titles, as well as perform any subsequent related operations, or designate to this end an agent who is domiciled or has his head office in Djibouti.

The power of attorney of the industrial property right owner may apply to one or more applications or registrations or all existing or future applications and registrations of the person represented, subject to any exception mentioned by the represented person in the power of attorney.

Article 5

Nationals from countries which do not belong to the International Union for the Protection of Industrial Property shall be entitled to benefit from the provisions of this Law if they are domiciled or have a real and effective industrial or commercial activity in the territory of one of the countries of the Union.

Article 6

Any person who has duly filed an application (first application) for an invention patent, a certificate of addition deriving from a main patent, a layout design (topographies) for integrated circuits, an industrial design or a factory mark, 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, for the purpose of filing said application in Djibouti (subsequent application), a right of priority during the periods provided for in Article 7 below.

Article 7

The period of priority mentioned above shall be 12 months for invention patents, certificates of addition deriving from a main patent, and layout designs (topographies) for integrated circuits, and six months for industrial designs and factory marks, trademarks and service marks. The periods shall start from the date of filing of the first application made in one of the countries of the Union. The filing date shall not be included in such periods. If the last day of the period is a public holiday or not a working day, the period shall be extended until the first following working day.

Article 8

Any person seeking to take advantage of the priority of an earlier filing made in one of the countries of the Union shall be obliged to make a written declaration of priority indicating the date, number, where known at the time of filing in Djibouti, and country of origin of such filing. If the priority filing number is not known when the application is filed in Djibouti, it shall be supplied by the applicant as soon as possible.

The priority declaration must be made on the date on which the application is filed in Djibouti.

Within three months following the date of filing of the application in Djibouti, the applicant shall supply the documents substantiating the earlier filing on the conditions to be determined by regulation.

Article 9

When a right of priority is duly claimed in Djibouti, filings may not be invalidated by circumstances which have occurred within the time periods between this filing and the priority filing, in particular by another filing, by the publication or working of the invention patent or the layout design (topography) for integrated circuits, by the

placing on sale of copies of the industrial design, or by the use of the mark, and such acts may not give rise to any third-party right or any right of personal possession.

Article 10

Two or more priorities may be claimed for one patent application, even if they originate in different countries. Where applicable, two or more priorities may be claimed for one claim.

Where two or more priorities are claimed, periods that have the priority date as their starting point shall be calculated as from the earliest priority date.

Where one or more priorities have been claimed for one and the same patent application, the patent rights shall cover only those elements of the application(s) for which priority is claimed.

Where certain elements of the invention for which priority has been claimed do not feature among the claims made in the earlier application, it shall be sufficient, for priority to be granted, for all the documents constituting the earlier application to disclose those elements in a precise manner.

Article 11

Failure to comply with the time periods and formalities provided for in Articles 7 and 8 above shall lead to the loss of the benefit of the right of priority in Djibouti.

Article 12

Invention patents, certificates of addition deriving from a main patent, industrial designs and factory marks, trademarks or service marks, filed with the benefit of the priority, shall enjoy a term of protection equal to the one laid down for filings made without claims of priority.

Article 13

Invention patents, certificates of addition deriving from a main patent, layout designs (topographies) for integrated circuits, industrial designs and factory marks, trademarks or service marks shall be entirely independent from the titles obtained in one of the countries of the International Union for the Protection of Industrial Property, for the same purpose, in terms of both the grounds for invalidity or revocation and the term of protection.

Article 14

All operations to file applications for industrial property titles as well as all actions affecting such titles shall be entered in the registers kept to this end by the Djibouti Office of Industrial and Commercial Property. The list and contents of these registers, which said entity shall keep indefinitely, shall be fixed by regulation.

The Djibouti Office of Industrial and Commercial Property shall keep the originals or reproductions of the documents in the applications for industrial property titles for a period of 10 years after the related rights have expired.

Article 15

Civil, Commercial and Magistrates' Chambers of Courts of First Instance shall be competent to hear any case stemming from the application of this Law.

TITLE II

INVENTION PATENTS

Chapter I

Scope of Application

Article 16

Any invention may be the subject of a patent granted by the Djibouti Office of Industrial and Commercial Property. The right to the patent shall belong to the inventor or his successors in title, subject to the conditions and limits laid down in this Law.

If several 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

The industrial property titles protecting inventions shall be:

((a) invention patents, granted for a term of protection of 20 years from the date on which the patent application is filed;

((b) certificates of addition, which are accessory titles for inventions whose subject matter is derived from at least one claim of a main patent. Said certificates shall be granted for a term which shall take effect from the date of filing of the corresponding application and shall expire on the date of the main patent from which they are derived.

Article 18

If the inventor is a salaried employee, the right to the industrial property title, barring any contractual provision which is more favorable for the salaried employee, shall be defined according to the following provisions:

((a) the inventions made by the salaried employee in the performance of either an employment contract comprising an inventive task which corresponds to his actual duties, or studies and research with which he has been explicitly entrusted, shall belong to the employer. The conditions in which a salaried employee who is the author of such an invention shall benefit from supplementary remuneration shall be determined by the collective labor agreements and individual labor contracts.

Any legal dispute relating to supplementary remuneration which the salaried employee could receive further to his invention shall be submitted to the Civil and Commercial Chambers of the Court of First Instance.

((b) all other inventions shall belong to the salaried employee. However, where an invention is made by a salaried employee, either in the course of the performance of his duties or in the company's field of activities, or through the knowledge or utilization of techniques or means specific to the company, or from data procured by it, the salaried employee must immediately inform his employer thereof by means of a written declaration sent by registered letter with acknowledgement of receipt.

The employer shall have six months as from the date of receipt of the above-mentioned written declaration to be granted ownership or enjoyment of all or part of the rights deriving from the invention of his salaried employee by filing a patent application with the Djibouti Office of Industrial and Commercial Property.

However, where the employer has failed to file the patent application within the foregoing period, the invention shall revert as of right to the salaried employee.

The salaried employee must obtain a fair price therefor which, failing an agreement between the parties, shall be fixed by the court; the court shall take into consideration all elements which may be given to it by the employer and by the salaried employee, to calculate the fair price based on both the initial contributions of both parties and the industrial and commercial utility of the invention.

((c) the salaried employee and the employer must communicate to each other all useful information on the invention in question. They shall abstain from making any disclosure that would be liable to compromise either entirely or in part the exercise of the rights granted under this Title.

Any agreement between the salaried employee and his employer having as its subject an invention of the salaried employee must be recorded in writing, on pain of invalidation.

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

The contents of the declaration shall be determined by regulation.

Article 19

The action claiming ownership shall be statute-barred after three years following the date on which the title is entered in the National Register of Patents referred to in paragraph 1 of Article 58 below.

Article 20

The inventor, whether or not he is a salaried employee, shall be referred to as such in the patent. The employer may also oppose such a reference.

Article 21

The invention may cover products, processes or any new application or a combination of known means to arrive at a result that is unknown in relation to the state of the art.

Article 22

Any new invention which involves an inventive step and is industrially applicable may be patented.

Article 23

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

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

Prior art shall consist of everything made available to the public by means of written or oral description, use or any other way before the date on which the patent application is filed in Djibouti or a patent application is filed abroad, for which priority has been validly claimed.

The state of the art shall also include the contents of patent applications filed in Djibouti or abroad that have a filing date earlier than the date of the patent application referred to in the second paragraph of this Article, and have not been published until that date or until a later date.

Article 24

An item of prior art with respect to a invention claimed in a patent application filed in Djibouti shall not affect the patentability of that claimed invention, in so far as that item would have included in the prior art on a date during the 12 months preceding the date when the application was filed in Djibouti or the priority date of the claimed invention owing to acts committed by:

- (i) the applicant or his legal predecessor,
- (ii) a Patent Office that has unduly published or made available to the public a patent application filed by the applicant or his legal predecessor, or an application filed without the knowledge or consent of the applicant or his legal predecessor by a third party which obtained information directly or indirectly from the applicant or his legal predecessor, or
- (iii) a third party which obtained the information contained in the item of prior art directly or indirectly from the inventor.

Article 25

An invention shall be considered to be industrially applicable if it can be made or used in any kind of industry, including agriculture.

Article 26

The following shall not be considered inventions:

- (a) naturally occurring discoveries, substances, materials and organisms, as well as parts or elements thereof;
- (b) scientific theories and mathematical methods;
- (c) the human body and the materials that make up the human body, at the various stages of its constitution and development, as well as the elements thereof, including the sequence or partial sequence of a gene;
- (d) essentially biological processes for the production of plants and animals;
- (e) literary and artistic works or any other esthetic creation;
- (f) schemes, rules and methods for performing mental acts, playing games or doing business;
- (g) computer programs;
- (h) presentations of information.

Article 27

The following may not be patented:

- (a) plants and animals other than micro-organisms;
- (b) methods of diagnostic or surgical or therapeutic treatment for the human or animal body;
- (c) inventions, the commercial working or implementation of which would be contrary to public order or morality, or would infringe upon the health or life of people, animals, plants or the environment.

Article 28

The provision of Article 27 (b) shall not apply to products, particularly substances or compositions, for the implementation of one of these methods.

Article 29

Throughout the term of the patent, the patent owner or his successors in title may make improvements or additions to the invention, which shall be evidenced by certificates of addition granted subject to the same formalities and conditions as the main patent and producing the same effects as that patent.

The provisions of this Law relating to invention patents shall apply to certificates of addition except for the provisions relating to the term of the patent and to the payment of the prescribed fees for the renewal of said patent, which are provided for in Articles 17((a) and 81 of this Law respectively.

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

Certificates of addition granted at the request of one of the successors in title shall benefit all of the others.

Article 30

Any application for a certificate of addition may, prior to its grant, be turned into a patent application at the request of the applicant. Such transformation shall take effect from the date of filing of the application for a certificate of addition.

Chapter II

Filing of patent applications and grant of patents

Section I - Filing of patent applications

Article 31

Anyone seeking an invention patent must file with the Djibouti Office of Industrial and Commercial Property a patent application in the following conditions.

The Djibouti Office of Industrial and Commercial Property shall consider the date of filing to be the date when it receives the application containing:

- (i) an explicit statement that a patent application is requested;
- (ii) details or data that make it possible to establish the identity of the applicant or to enable the Office to make contact with the applicant;
- (iii) a part that describes the invention and that may include one or more drawings needed to understand the invention.

If the Office establishes that, at the time the application is received, the conditions in the first paragraph have not been met, it must write to invite the applicant to make the necessary correction within three months. If a correction is requested, a provisional

filing receipt shall be issued and then made final after three months. If the correction is not made, however, then a final and grounded rejection of the application shall be issued.

If the application refers to drawings that are not included in the application, the Office shall write to the applicant to invite him to provide the missing drawings. If the applicant takes up the invitation, the application date considered shall be the date of receipt of the missing drawings. Otherwise, the application date shall be considered as the date the application was received, and any reference to those drawings shall be considered null and void.

Article 32

Filing an application shall be subject to the payment of a set fee.

The applicant shall supply with his patent application the date and number of any patent application that he or his legal predecessor has filed abroad ("foreign application") in relation to the same invention, or essentially the same invention, as the one claimed in the application filed with the Djibouti Office of Industrial and Commercial Property.

The applicant shall be required to provide the Djibouti Office of Industrial and Commercial Property with a copy of any final decision canceling the patent issued on the basis of the foreign application referred to in the previous paragraph.

Article 33

After the application has been filed, a receipt stating the delivery date of the patent application shall be immediately given to the applicant or his agent.

Article 34

The description of the invention shall disclose the invention in a way that is sufficiently clear and complete to enable a person skilled in the art to carry it out.

In particular, the description of the invention shall:

(a) specify the technical field to which the invention relates;

(b) indicate the background art which, as far as known to the applicant, can be regarded as useful for understanding the invention and the searching and examination of the invention in the event of a dispute, and, preferably, cite the documents reflecting such art. If the invention claimed has been developed or obtained directly from genetic or biological resources obtained from a particular source, or from the use of traditional knowledge obtained from a particular community, the description shall indicate the source of these resources or knowledge, as well as the way in which they have been obtained;

(c) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state the advantageous effects, if any, of the invention with reference to the background art;

(d) set forth at least one embodiment of the invention for which protection is claimed; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any.

(e) briefly describe the figures in the drawings, if any;

(f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable;

If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being sufficiently disclosed if:

((a) a sample of the biological material has been deposited with a recognized depositary institution not later than the date of filing of the application;

((b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material;

((c) the name and address of the depositary institution, the filing date and the accession number of the deposited biological material are stated in the application, and

((d) the applicant provides the deposit certificate for the biological material.

Where the biological material has been deposited by a person other than the applicant, the name and address of the depositor shall be stated in the application and a document is submitted satisfying the Djibouti Office that the depositor has authorized the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public.

Other formalities for the description and formalities relating to the time limits for submitting and communicating information and others relating to biological materials used for the invention, as well as issues relating to the filing provided for in this Article and access to samples, shall be fixed by regulation.

Article 35

The scope of the protection granted by the patent shall be determined by the wording of the claims. The description and the drawings may be of use for the interpretation of the claims. Claims shall be clear and concise. They shall be fully supported by the description.

Article 36

The title shall describe the subject matter of the invention. It must clearly and concisely highlight the technical designation of the invention and not include any imaginary name.

Article 37

The patent application may not contain:

((a) elements or drawings which would be contrary to public order or morality if they were published or put into practice;

((b) denigrating statements concerning goods or processes of third parties or the merits or validity of patent applications or patents of third parties. Mere comparisons with prior art shall not be considered denigrating as such;

((c) clearly foreign elements in the description of the invention.

A patent application may not contain any restrictions, conditions or reservations.

Article 38

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

Any application that does not comply with the provisions of the previous paragraph shall be divided within the established time frame; divisional applications shall retain the filing date and, where relevant, the date of priority of the initial application.

Article 39

At any time, the applicant may seek the correction of mistakes in expression or transcription as well as substantive errors detected in the documents filed.

Any correction that results in an extension of the contents of the patent application beyond the disclosure included in the initial application shall be rejected.

Requests for corrections shall be made in writing and shall include the text of the proposed amendments. This shall be subject to an established fee.

Article 40

The owner of a patent application or his agent who holds a special authorization may, starting from the date on which his application is filed and before the date on which the patent is granted, withdraw his patent application through a written declaration subject to the following conditions:

(a) if licenses or encumbrances have been entered in the National Register of Patents referred to in the first paragraph of Article 58 below, the declaration of withdrawal shall be entertained only if it is accompanied by the written consent of the owners of the rights concerned;

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

A reference to the withdrawn application shall be entered by the Djibouti Office of Industrial and Commercial Property in the National Register of Patents referred to in the first paragraph of Article 58 below.

Article 41

A patent application shall be refused if:

(a) its subject matter clearly does not meet the conditions referred to in Articles 21 and 22;

(b) it clearly does not meet the requirements for novelty provided for in Article 26 or a relevant disclosure has arisen outside the framework provided for in Article 27;

(c) its subject matter is an invention that is clearly non-patentable under Article 23;

(d) the subject matter cannot be considered an invention under the terms of Article 24;

(e) it does not meet the conditions provided for in Article 32;

(f) it has not been amended in accordance with Article 32;

(g) its description or claims clearly do not meet the conditions provided for in Articles 34 and 35, particularly where claims are not based on the description;

(h) it does not clearly and concisely indicate the title of the invention as provided for in Article 36;

(i) it contains foreign elements, denigrating statements or those contrary to public order or morality under the terms of Article 37;

(j) it has not been divided in accordance with Article 38;

(k) it concerns a divisional application or a correction provided for in Article 39 whose

subject matter would extend beyond the contents of the description in the original application.

All rejections of patent applications must be substantiated and notified to the applicant or his agent by registered letter with acknowledgement of receipt. A reference to said rejection shall be entered in the National Register of Patents referred to in the first subparagraph of Article 58 below.

If the Djibouti Office of Industrial and Commercial Property plans to reject or refuse an application because it does not satisfy a condition applicable under the terms of Article 41, it shall give the applicant the opportunity to make observations on the intended rejection or refusal, and to make amendments and corrections to the application within three months, which may be extended subject to a reasoned request on the part of the applicant.

The applicant shall have the right to take the initiative to amend and correct the description, claims, abstract and any drawings at any time, without any such amendments or corrections resulting in an extension to the contents of disclosure of the initial application.

Article 42

All disputes relating to compensation shall be referred to the Civil and Commercial Chamber of the Court of First Instance.

Article 43

Where the patent application has not been rejected under the provisions of Article 41 above, and upon the expiry of a time period of 15 days starting from the date of filing or, where applicable, the date on which the patent application file is corrected, a report recording the filing of said application and mentioning the date of said filing and the attached documents shall be drawn up by the Djibouti Office of Industrial and Commercial Property.

This report shall be conveyed or notified to the applicant or his agent.

Article 44

The public shall be informed of the publication of the application through the announcement of the following information in the Official Gazette referred to in Article 88 below:

- (i) application filing number and date;
- (ii) title of the invention;
- (iii) names of applicant(s) and inventor(s);
- (iv) date(s) of priority;
- (v) international patent classification symbols in relation to the invention;
- (vi) a drawing, where relevant, that illustrates the main element or elements of the invention;

(vii) an abstract of the technical contents.

The Djibouti Office of Industrial and Commercial Property shall not grant third parties access to the content of the patent application or furnish any information on its contents to third parties prior to the publication of the announcement referred to in subparagraph (a).

Article 45

Only the owner(s) of the patent application or his (their) agent, to whom the report has been conveyed or notified, may obtain, subject to a written request submitted during the time period laid down in Article 44 above, an official copy of the original description and, where applicable, the drawings, issued by the Djibouti Office of Industrial and Commercial Property.

Section II – Grant of the patent

Article 46

Patents shall be granted after the period of three months following the publication of the patent application has expired, if there is no opposition in accordance with Article 44.

Article 47

Patents for which the application has not been rejected or has not been the subject of opposition shall be granted without prior examination, at the applicants' risk and without guarantee as to the reality of the invention, the faithfulness or accuracy of the description or the merits of the invention.

Article 48

An invention patent shall be granted by the Djibouti Office of Industrial and Commercial Property and conveyed to the applicant or his agent, accompanied by the description, the claim(s) and, where applicable, the drawings.

The number of the patent and the date of its grant shall be entered in the National Register of Patents referred to in the first paragraph of Article 58 below. As from the date of this entry, anyone may acquaint himself with the patent and receive a copy thereof.

Article 49

The descriptions, claims and drawings for the invention patents and certificates of addition granted shall be conveyed by the Djibouti Office of Industrial and Commercial Property to anyone wishing to obtain an official copy thereof.

Article 50

Patents granted shall be published in the Official Gazette referred to in Article 88 below.

Chapter III

Rights deriving from invention patents

Section I - Exclusive right to work

Article 51

An invention patent shall confer on its holder the exclusive right to work the patented invention by means of acts referred to in Articles 53 and 54.

Article 52

The scope of the protection granted by the patent shall be determined by the wording of the claims. However, the description and the drawings may be of use for the interpretation of the claims.

If the subject matter of the patent relates to a process, the protection granted by the patent shall extend to the goods obtained directly by means of this process.

Article 53

The following acts shall be prohibited to third parties without the patent owner's consent:

((a) the manufacture, use, offering for sale, sale or importation for those purposes, of the good to which the patent relates;

((b) the use of a process which is the subject matter of the patent and, the use, offering for sale, sale or the importation, for those purposes, of the good obtained directly through such a process.

Article 54

It shall also be prohibited, without the patent owner's consent, to deliver or offer to deliver, on Djiboutian territory, to a person other than the one entitled to work the patented invention, the means for the implementation, on Djiboutian territory, of this invention relating to an essential element thereof, where the third party knows, or it is obvious in the circumstances, that these means are suitable and intended for such implementation.

The provisions of the foregoing paragraph shall not apply where the means of implementation are goods commonly available for sale to the public, unless the third party incites the person he supplies to commit acts prohibited by Article 53 above.

Persons who perform the acts referred to in Article 55 below shall not be considered persons authorized to work the invention, as defined by the first paragraph of this Article.

Article 55

A patent shall not confer on its owner the rights in:

(a) acts relating to products that have been introduced into the commerce of any country by the owner or another person authorized by the right holder or with economic ties to that patent owner. For these purposes, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence over the other, either directly or indirectly, with respect to the working of the patent or when a third party is able to exert that influence over both persons.

Article 56

The rights deriving from a patent application or a patent may be transferred either in full or in part.

The rights may be the subject, either in full or in part, of a license for exclusive or non-exclusive use, as well as an encumbrance.

The rights conferred by the patent application or patent may be asserted against a licensee who infringes one of the limits of his license imposed in accordance with the previous paragraph.

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

Acts comprising transfer or a license, as referred to in the first two paragraphs above, shall be recorded in writing, on pain of invalidation.

Article 57

Unless otherwise stipulated in the contract, the licensee shall benefit as of right from such certificates of addition deriving from the patent forming the subject matter of the license, as are granted after the date on which the contract for the license to work is signed, to the owner of the patent or his successors in title.

Conversely, the owner of the patent or his successors in title shall benefit from any certificates of addition deriving from the patent that are granted subsequently to the licensee starting from the date on which the contract for the license to work is signed.

Article 58

To be binding on third parties, any acts which transfer, amend or affect the rights deriving from a patent application or a patent must be entered in a register known as the "National Register of Patents", which shall be kept by the Djibouti Office of Industrial and Commercial Property.

However, an act shall be binding before such entry on third parties who have acquired rights after the date of the act, with notice of the act when the rights were acquired.

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

For entries concerning references following a court judgment which has become final, the Registrar's Office shall send within 15 days of the date of said judgment, to the Djibouti Office of Industrial and Commercial Property, a complete set of decisions free of charge relating to the existence, scope and exercise of the rights deriving from the protection granted under this Title.

The necessary formalities and the documents to be attached to the requests for entries shall be fixed by regulation.

Section II - Transfer and loss of rights

Subsection I - General provisions

Article 59

Any interested person may obtain an excerpt from the National Register of Patents.

Subsection II - Compulsory licenses

Article 60

Any person or entity under public or private law may, three years after the patent is granted or four years after the date on which the patent is applied for, obtain from the court a compulsory license for such patent, on the conditions provided for in Articles 61 and 62 below, if at the time of the request, and failing legitimate reasons, neither the owner of the patent or his successor in title: (TRANSLATOR,S NOTE – TEXT MISSING FROM ORIGINAL)

Article 61

Applications for compulsory licenses shall be lodged with the court. They must be accompanied by proof that the applicant has not been able to obtain from the patent owner a license to work by mutual agreement, in particular on reasonable commercial conditions and arrangements. This proof shall not be required in the cases provided for in the following paragraph.

At any time, the court may, even without the approval of the owner of the patent, authorize a government agency or a third person designated by the court to work the invention if:

(i) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires,

(ii) it is determined that the manner of working of the invention or other use of the patent, by the owner of the patent or his licensee, shall be anti-competitive or constitute an abuse of the exclusive rights granted under the patent.

In the cases provided for in the previous paragraph, as well as in any case of public use for non-commercial purposes or in situations of national emergency, the patent owner shall nonetheless be informed of the decision as soon as is reasonably possible.

Article 62

Compulsory licenses may only be non-exclusive.

Compulsory licenses shall be non-exclusive and non-transferable, except with that part of the enterprise or goodwill that enjoys such use.

Any compulsory license shall be granted primarily to supply the Djiboutian market, except in the event of application of Article 31bis of the TRIPS Agreement.

They shall be granted on conditions set by the court, in particular with regard to their duration and scope, which shall be limited to the purposes for which the licenses have been granted, and shall be subject to payment of an appropriate royalty to the patent owner. Such royalties shall be fixed, taking into consideration the economic value of the working of the patent, as determined in the court's decision or given the need to correct anti-competitive or abusive practices.

These conditions may be amended by the court at the request of the patent owner or licensee.

These conditions for the granting of this compulsory license may be amended by the court at the request of the patent owner or licensee.

Article 63

Where the circumstances which led to the granting of the compulsory license no longer remain and will in all likelihood not recur, the license to work may be withdrawn on the condition that licensees' legitimate interests are adequately protected. The court may review, upon the substantiated request of any party having an interest therein, whether these circumstances still exist.

Article 64

Court decisions which have become final and have been taken pursuant to the

provisions of this Subsection II must be immediately notified to the Djibouti Office of Industrial and Commercial Property, which shall enter them in the National Register of Patents.

Article 65

The beneficiary of a compulsory license may obtain from the court, on the conditions provided for in Articles 60 to 62 above, failing a mutual agreement, a compulsory license for a certificate of addition deriving from the patent itself even if such certificate has been granted prior to the expiry of the time periods stipulated in Article 60 above.

Article 66

Where an invention protected by a patent cannot be used without infringing the rights deriving from an earlier patent whose owner refuses to grant a license for use on reasonable commercial terms and arrangements, the owner of the subsequent patent may obtain a compulsory license from the court on the same conditions as those provided for in Articles 60 to 62 above, provided that:

any application for a non-compulsory license shall be subject to the payment of a set fee.

Article 67

Where public health interests so dictate, patents granted for drugs, for processes to obtain drugs, for goods needed to obtain these drugs or for processes for manufacture of such products, may, where the drugs are made available to the public in quantity or quality that are inadequate or at abnormally high prices, be worked *ex officio*.

In situations of national emergency or to protect public health, the Government shall import in sufficient quantity and at an affordable cost medicines worked *ex officio* if it is unable to produce generic medicines itself.

Ex officio working shall be enacted by presidential decree, based on a proposal by the Minister of Health.

Article 68

The decree referred to in Article 67 above shall be notified to the patent owner, to the licensees, where applicable, and to the Djibouti Office of Industrial and Commercial Property, which shall enter it as of right in the National Register of Patents.

Article 69

On the day on which the Decree enacting the *ex officio* working of a patent is published, any qualified person may request the granting of a so-called “*ex officio* license” to work.

Such a license shall be requested and granted in the forms fixed by regulation.

An *ex officio* license shall be granted on specific conditions, in particular with regard to its term and scope.

The royalties to which it gives rise shall be left to the discretion of the parties to determine. Failing an agreement between them, such royalties shall be fixed by the court.

The *ex officio* license shall come into force on the date of notification of the act granting it to the parties. This act shall be entered as of right in the National Register of Patents.

This license shall be non-exclusive and non-transferable, except with that part of the enterprise or goodwill that enjoys such use.

If an *ex officio* license has been granted for an invention relating to a pharmaceutical product by an exporter country in the framework of the system described in Article 31*bis* of the TRIPS Agreement and the annex thereto, and if appropriate payment under the terms of Article 31(h) of that Agreement has been made in that country, the obligation to make another payment for the same product imported into Djibouti shall not apply.

Article 70

Amendments to the clauses of the license, which have been requested either by the patent owner or the licensee, shall be decided upon and published according to the procedure laid down for the grant of said license. Where they relate to the amount of royalties, they shall be decided upon according to the procedure laid down for the original fixing of that remuneration.

The withdrawal of the license requested by the patent owner for failure to comply with the obligations imposed on the licensee shall be made in accordance with the provisions of the regulatory text referred to in Article 69.

Article 71

The Minister of Trade and Industry may serve formal notice on the owners of invention patents other than those referred to in Article 67 above to undertake the working thereof in such a way as to meet the needs of the national economy or to correct anti-competitive practices.

Article 72

The decision to serve the formal notice provided for in Article 71 above must be substantiated and notified to the owner of the patent and, where applicable, the holders of the licenses entered in the National Register of Patents or their agents.

Article 73

Where the formal notice provided for in Article 71 above has not been acceded to within the time period of one year beginning from the date of receipt of notification

thereof and where the non-working or the qualitative or quantitative inadequacy of the working undertaken seriously prejudices economic development or the public interest, or has been unable to correct anti-competitive practices, the patents to which the formal notice relates may be worked *ex officio*.

Ex officio working shall be enacted by presidential decree, based on a proposal by the Ministry of Trade and Industry.

The time period of one year laid down in the first paragraph above may be extended by decree where the patent owner provides proof of legitimate reasons which are compatible with the needs of the national economy.

The extension referred to in the previous paragraph shall start on the date of expiry of said time period of one year. The decision to grant this extension shall be taken and notified according to the procedure and in the forms provided for by the decision to serve formal notice.

Article 74

If, in accordance with the provisions of the first and second paragraphs of Article 73 above, recourse is had to the *ex officio* working of patents, the provisions of Articles 68 to 70 above shall apply.

Subsection III - Ex officio licensing

Article 75

An *ex officio* license shall be granted by presidential decree, at the request of the Minister of Defense.

This act shall fix the conditions for grant of the license to the exclusion of those relating to the royalties to which it gives rise. The license shall enter into force on the date on which the request for the *ex officio* license is made.

Failing amicable agreement between the patent owner and the Minister of Defense, the amount of the royalties shall be fixed by the Civil and Commercial Chamber of the Court of First Instance.

Article 76

The seizure of a patent may be authorized by an order from the President of the Court ruling in summary proceedings, as provided for in Article 1, paragraph 1, of the decision of March 11, 1969 on Protective Measures.

The order authorizing the seizure shall be notified to the patent owner, the Djibouti Office of Industrial and Commercial Property and those persons holding rights in the patent as entered in the National Register of Patents.

Once notice of seizure has been given, no subsequent amendment of the rights deriving from the patent shall be binding on the attaching creditors.

Notice of seizure shall be given within 15 days of the order, on pain of invalidation.

On pain of invalidation for the seizure, the attaching creditors shall have 15 days as from the date of the entry of the seizure in the National Register of Patents to give such notice to file proceedings before the court for confirming the validity of the seizure or the action on merit.

The Court shall have the authority to order the placing of the patent for sale by converting the garnishment into distraint.

Subsection V - Joint ownership of patents

Article 77

Subject to Article 79 below, the joint ownership of a patent application or a patent shall be governed by the following provisions:

((a) each of the joint owners may work the invention for his benefit, provided that he fairly compensates the other owners who are not personally working the invention or who have not granted licenses for use. Failing amicable agreement, such compensation shall be fixed by the court;

((b) each of the joint owners may take legal proceedings in respect of infringements for his sole benefit. The petition for infringement must be notified to the other joint owners. No court decision shall be taken on the proceedings until proof of such notice has been provided;

((c) each of the joint owners may grant a third party a non-exclusive license for use for his benefit, provided that he fairly compensates the other joint owners who are not personally working the invention or who have not granted licenses for use. Failing amicable agreement, this compensation shall be fixed by the court. Nevertheless, the intent to grant must be notified to the other joint owners, accompanied by an offer to transfer the share at a given price. Within three months following this notice, any of the joint owners may oppose the grant of license, provided that he acquires the share of the joint owner wishing to grant the license. Failing an agreement within the time period stipulated above, the price shall be fixed by the court. The parties shall have 30 days as from notice of the court decision, to withdraw from the grant or the purchase of the joint owner's share, without prejudice to the award of any damages which may be due; costs shall be borne by the withdrawing party.

((d) an exclusive license for use may only be granted with the consent of all of the joint owners or by leave of the court;

((e) each joint owner may assign his share at any time. The joint owners shall have a right of preemption for three months starting with the notice of intent to assign. Failing an agreement on the price, it shall be fixed by the court. The parties shall have 30 days as from notice of the court decision to withdraw from the sale or purchase of the share of the joint ownership, without prejudice to the award of any damages which may be due; costs shall be borne by the withdrawing party.

Article 78

The joint owner of a patent application or patent may notify the other joint owners that he is waiving his share for their benefit. As from the date on which such waiver is entered in the National Register of Patents, said joint owner shall be discharged of any obligations with regard to the other joint owners where they consent to said waiver. The joint owners shall divide up the waived share in proportion to their rights in the joint ownership, unless otherwise agreed.

Article 79

The provisions of Articles 77 to 78 above shall apply unless otherwise stipulated.

The joint owners may derogate therefrom at any time by means of regulations for joint ownership.

Subsection VI - Miscellaneous provisions

Article 80

The holder of such an exclusive right may waive it at any time, for either the entire invention or for one or more claims to the patent.

Waiver must take the form of a written declaration by the patent owner or his agent. In the latter case, a special waiver authorization must be attached to the declaration.

If the patent is jointly owned, waiver may only be effected if it is required by all of the joint owners.

Where licenses or encumbrances have been entered in the National Register of Patents, the declaration of waiver shall only be entertained if it is accompanied by the consent of the owners of such rights.

Waiver shall be entered in the National Register of Patents. It shall come into force on the date of such entry.

Article 81

A patent owner who has not paid the prescribed fees to renew his rights within the time periods laid down shall forfeit said rights.

However, payment of the prescribed fees may be validly effected, in return for payment of a surcharge, during an additional period of six months starting from the date on which the rights are forfeited.

Article 82

A patent owner who has failed to pay the prescribed fees upon expiry of the six-month time period laid down in the second paragraph of Article 81 above shall have his rights revoked.

Revocation shall come into force on the due date of the missed payment.

Revocation of a patent shall entail the revocation of the certificates of addition deriving from said patent

Article 83

The patent owner may, during the three-month period starting with the date of receipt of notice of the decision referred to in Article 82, file an appeal with the Djibouti Office of Industrial and Commercial Property for reinstatement of his rights if he can provide a legitimate excuse for the non-payment of the prescribed fees.

Reinstatement of rights may be granted through a written decision by the Djibouti Office of Industrial and Commercial Property, provided that said prescribed fees have been paid before the expiry of the three-month time period provided for in the previous paragraph.

A reference to the decision for reinstatement of rights shall be entered in the National Register of Patents, which shall also contain a reference to the date of payment of the prescribed fees. The decision for reinstatement of the rights shall be notified to the patent owner or his agent.

Article 84

The court shall invalidate the patent at the request of anyone with an interest:

((a) if the invention may not be patented under the provisions of Articles 22 to 28 of this Law;

((b) if the description of the invention does not explain the invention sufficiently to allow a person skilled in the art to carry it out;

((c) if the subject matter of the invention goes beyond the content of the initial application as filed;

((d) if the claims fail to define the scope of protection sought.

Where the grounds for invalidity affect the patent only partly, the invalidity shall be pronounced in the form of a limitation corresponding to the claims.

Article 85

An invalidity action may be brought by anyone with an interest.

The Public Prosecutor's Office may be a party to the proceedings before any court asked to take a decision invalidating a patent, and may petition for the absolute invalidity of the patent.

It may even appeal directly for invalidity by means of a main action.

Article 86

A patented invention which the owner has had revoked and an invention whose patent has been revoked may not give rise to another patent application filing.

Article 87

Certificates of addition shall end with the main patent; however, in cases where the patent is declared invalid pursuant to Article 84 above, certificates of addition shall not be affected by such invalidity if the improvements they cover constitute an invention.

Chapter IV

Publication of invention patents

Article 88

The Djibouti Office of Industrial and Commercial Property shall publish an Official Catalog of the invention patents granted, containing references to the acts covered in the first paragraph of Article 58 above.

TITLE III

LAYOUT DESIGNS (TOPOGRAPHIES) FOR INTEGRATED CIRCUITS

Chapter I

Scope

Article 89

The following definitions shall apply under this Law:

— layout design (topography) means the three-dimensional arrangement, whatever its expression, of elements, at least one of which is an active component, and all or part of the interconnections of an integrated circuit, or such a three-dimensional arrangement which is prepared for an integrated circuit intended to be manufactured;

— integrated circuit : a product, in final or intermediate form, of which at least one element is an active component and some or all of whose interconnections are an integral part of the body and/or surface of a piece of material that is intended to be used electronically.

Article 90

Layout designs (topographies) for integrated circuits which are original insofar as they are the fruit of the intellectual effort of their creators and which, at the time of their creation, are not common for the creators of layout designs (topographies) and manufacturers of integrated circuits, may be protected as provided for by this Law.

A layout design (topography) for integrated circuits, which consists of a combination of elements or interconnections that are common, shall only be protected if the combination, considered as a whole, meets the conditions referred to in the above paragraph.

Article 91

The protection granted to a layout design (topography) for integrated circuits shall only apply to the layout design (topography) for integrated circuits as such, to the exclusion of any concept, process, system, technique or coded information incorporated in this layout design.

Chapter II

Miscellaneous provisions

Article 92

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

Article 93

Any layout design (topography) for integrated circuits may give rise to an industrial property title known as a "certificate of layout design (topography) for integrated circuits".

Layout designs (topographies) for integrated circuits shall be protected for a period of ten years from the date on which the corresponding application is filed or from the first commercialization of said design in any part of the world, whichever date came first.

Article 94

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 layout designs (topographies) for integrated circuits.

Article 95

A request for a certificate for a layout design (topography) for integrated circuits must be accompanied, when filed, by a copy or a drawing of the layout design (topography) for integrated circuits and, where the integrated circuit has been used commercially, by a sample of the integrated circuit, as well as information defining the electronic function which the integrated circuit is intended to perform.

The request shall specify the date of the first commercialization of said design in any part of the world, or shall state that the commercialization has not begun.

Article 96

Unless the layout design is common, an application covered by Article 95 above may not be filed two years after the first commercialization of said design in any part of the world. Moreover, said application may under no circumstances be filed 15 years after

the final or intermediate topography of the integrated circuit has been fixed or coded for the first time, if it has never been worked.

Article 97

Any request for a certificate of layout design (topography) for integrated circuits which does not meet the provisions of Article 95 above and Section I of Chapter II of Title II of this Law shall be rejected.

Article 98

The following shall be considered unlawful if performed without the authorization of the holders of the right in a layout design (topography) for integrated circuits:

((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 90 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 is incorporated, or an item incorporating such an integrated circuit, only insofar as this item continues to contain an unlawfully reproduced layout design.

Article 99

The following acts shall not be considered unlawful:

((a) the acts referred to in Article 98((a) above, 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 separate topography which can qualify for protection in accordance with the provisions of this Law;

((c) any of the acts referred to in Article 98 above in respect of an integrated circuit incorporating an unlawfully reproduced layout design (topography), or of any item incorporating such an integrated circuit, where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring said integrated circuit or item incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design. After the time that such person has received sufficient notice that the layout design has been unlawfully reproduced, that person may perform any of the acts referred to in respect of the stocks on hand or ordered before such time, but shall be liable to pay the right holder a sum equivalent to a reasonable royalty as would be payable under a freely negotiated license in respect of such a layout design.

Article 100

Where no application for a certificate has been filed for a layout design (topography) for integrated circuits within a period of 15 years starting from the date of its creation, no exclusive right shall come into being.

Article 101

Certificates of layout designs (topographies) for integrated circuit which are not original as defined in Article 90 above and which do not meet the conditions provided for in Article 96 above may be declared invalid by the courts at the request of any interested person.

Article 102

Any interested person may obtain an excerpt from the register recording the entries made to a register known as the “National Register of Certificates of Layout Designs (Topographies) for Integrated Circuits” kept by the entity responsible for industrial property.

TITLE IV

INDUSTRIAL DESIGNS

Chapter I

Scope

Article 103

For the purposes of this Law, any combination of lines or colors and, as an industrial design, any three-dimensional form, whether or not associated with lines or colors, shall be deemed to be an industrial design, provided that such combination or form gives a special appearance to a product of industry or handicraft and can serve as a model for the manufacture of a product of industry or handicraft.

The industrial design must differ from similar designs either through a separate, recognizable configuration giving it a character of novelty, or through one or more external aspects giving it a specific and new appearance.

Article 104

An industrial design shall be new if it has not been made available to the public through concrete publication, usage or any other means anywhere in the world, prior to the date of its filing or, where applicable, prior to the date of validly claimed priority.

An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of 12 months preceding its date of filing, it appeared for the first time in an official or officially recognized international exhibition, organized on the territory of one of the countries of the International Union for the Protection of Industrial Property.

The design or model of a part of a complex product shall only be considered new and to present an individual character to the extent that:

(a) the component part, once it has been incorporated in the complex product, remains visible during normal use of the product by the end user, excluding maintenance, servicing or repair work;

(b) those visible features of the component part fulfill in themselves the requirements as to novelty and individual character.

A product composed of multiple components which can be replaced shall be considered a complex product.

Chapter II

Right to protection

Article 105

The ownership of an industrial design shall belong to the person who has created it or to his successors in title, but the first person filing said industrial design shall be assumed, unless proven otherwise, to be the creator thereof, subject to the provisions of Article 106 below.

Article 106

The provisions of Articles 18 and 19 above shall apply to industrial designs.

Article 107

Designs consisting exclusively of the characteristics imposed by their technical function shall not benefit from the protection provided for in this Law.

Article 108

If two or more persons have jointly created an industrial design, the right to obtain legal protection shall belong to them or to their successors in title jointly. Any person who has merely assisted in the creation of the industrial design without making any contribution of a creative nature shall not, however, be considered a creator or co-creator.

Article 109

The provisions of Articles 77 to 79 above shall apply to industrial designs.

Article 110

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

Article 111

Only industrial designs which have been duly filed and registered by the Djibouti Office of Industrial and Commercial Property shall qualify for the protection granted by this Law, as from the date of filing.

The registration of an industrial design shall give rise to the establishment of an industrial property title known as a "certificate of registration for an industrial design", filed and registered in the forms and conditions prescribed in Chapter III of this Title.

Article 112

The following shall not qualify for the protection afforded by this Law: industrial designs which are contrary to morality or public order as well as industrial designs reproducing acronyms, denominations, decorations, emblems and currencies mentioned in Article 134(a) below, unless the competent authorities have authorized their use.

Chapter III

Procedure for filing and registering industrial designs

Article 113

Any person wishing to obtain a certificate of registration for an industrial design must file with the Djibouti Office of Industrial and Commercial Property an application for the industrial design on the conditions provided for in this Chapter.

A single application may relate to up to 100 industrial designs, provided that the said industrial designs are intended to be incorporated in objects arranged in the same class of the amended 1968 Locarno Agreement Establishing an International Classification for Industrial Designs.

The application shall contain the following on the date of filing:

- (a) a request to register the design;
- (b) the name and address of the applicant, owner or other interested person;
- (c) the number of designs and graphic or photographic reproductions included in the application;
- (d) a graphic or photographic reproduction of the designs;
- (e) the title of the product or products which constitute the industrial design or in relation to which the industrial design is to be used, with an indication whether the product or products constitute the industrial design or are products in relation to which the industrial design is to be used; the product or products shall preferably be identified by using terms appearing in the list of goods of the International Classification;

(f) proof that the set fees have been paid.

If the application does not meet one of the conditions listed in this paragraph, and if the application has not been amended in accordance with Article 114, the Djibouti Office of Industrial and Commercial Property shall declare it inadmissible and the filing date shall not be retained.

For the purposes of registration, the application shall contain:

(a) the name and address of the agent and a reference to the power of attorney, or other communication in which the appointment of that agent is or was effected;

(b) the name and address of the creator if different from the applicant;

(c) where relevant, a declaration claiming the priority of that earlier filing, together with an indication of the name of the Office where such filing was made and of the date and, where available, the number of that filing;

(d) where relevant, a declaration that the product or products which constitute the industrial design or in which the industrial design is incorporated have been shown at an official or officially recognized international exhibition, together with the place where the exhibition was held and the date on which the product or products were first exhibited there;

(e) the signature of the applicant or his agent.

Article 114

If the Office establishes that, at the time of receipt of the application, the conditions of the third paragraph of Article 113 have not been met, it shall write to the applicant and invite him to make the necessary correction within three months. The retained filing date shall then be the date when the requested correction is received. However, if the correction is not made, the application shall be considered not to have been filed.

The date of receipt of the application shall be considered the filing date, provided that the conditions specified in the third paragraph of Article 113 have been met.

The Djibouti Office of Industrial and Commercial Property shall examine whether the application meets the conditions provided for in the fourth paragraph of Article 113.

Where the application for an industrial design contains the documents referred to in this Article, the application to file an industrial design, as provided for above, shall be entered in chronological order of the filings in the National Register of Industrial Designs referred to in the first paragraph of Article 125 below, with a filing date and number.

If the Office establishes that the conditions of the fourth paragraph of Article 113 have not been met, it shall write to the applicant and invite him to make the necessary correction within three months. If the irregularities are not corrected within

this time, the Djibouti Office of Industrial and Commercial Property shall reject the application.

Article 115

A receipt recording the date on which the documents referred to in the third and fifth paragraphs of Article 113 above have been provided shall be delivered to the applicant or his agent immediately following the filing of the request.

Article 116

The applicant may at any time seek the correction of any mistakes in expression or transcription or any substantive errors detected in the documents filed, with the exception of the graphic or photographic reproductions of the industrial designs filed, which may not be amended.

The request for correction referred to in the first paragraph of this Article shall be submitted in writing and shall include the changes proposed.

Article 117

Any application filed for an industrial design which:

- (1) does not meet the conditions of Article 103;
- (2) does not meet the conditions of Articles 112 and 113;
- (3) has not been corrected in accordance with Article 114;

shall be rejected.

The rejection of any application to file an industrial design must be substantiated and notified to the applicant or his agent by registered letter with acknowledgement of receipt. A reference to said rejection shall be entered in the National Register of Industrial Designs referred to in the first paragraph

of Article 125 below. The rejection decision may be appealed before the Civil and Commercial Chamber of the Court of First Instance of Djibouti within two months from the notification.

Article 118

Where the application to file an industrial design is not rejected under Article 117 above, the industrial design shall be registered by the Djibouti Office of Industrial and Commercial Property without prior examination as to the merits.

The date of registration shall be the date of filing.

Filing shall give rise to registration in the National Register of Industrial Designs referred to in the first paragraph of Article 125 below.

Article 119

Further to the registration provided for in Article 118 above, a report recording the filing of the industrial design and mentioning the date of said filing and the attached documents shall be drawn up by the Djibouti Office of Industrial and Commercial Property, along with the certificate of registration of the industrial design, accompanied by the graphic or photographic reproduction of the industrial design. The report and the certificate of registration shall be conveyed or notified to the applicant or his agent.

Article 120

Any interested party may obtain, following a written request, an official copy of the original industrial design upon production of the graphic or photographic reproduction of the industrial design registered.

Chapter IV

Effects of the registration of an industrial design

Article 121

The registration of an industrial design shall be for a period of five years as from the date of application. It may be renewed for two consecutive five-year periods, upon request and in exchange for the payment of a set renewal fee.

The registration must be renewed in the six months prior to the expiry of its term of validity.

Nevertheless, a six-month grace period shall be afforded to request renewal and for payment of the renewal fee following expiry, on payment of a set surcharge.

Article 122

Any creator of an industrial design or his successors in title shall have the exclusive right to work, sell or offer for sale this industrial design, in accordance with the provisions provided for in this Law, without prejudice to the rights they may hold under other legal provisions, in particular legislation relating to the protection of artistic or literary works.

Article 123

Registering an industrial design shall award the owner the right to prevent third parties from working the industrial design for commercial or industrial purposes without his consent.

For the purposes of the rights awarded by the registration of an industrial design, "working" of a registered industrial design shall be understood to mean the manufacture, sale or import, for commercial purposes, of items incorporating the

industrial design.

A design right shall not subsist in features of the appearance of a product which are solely dictated by its technical function.

Registering a design shall not give rise to rights in features of the appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or in contact with another product so that either product may perform its function.

Registering a design shall not give rise to rights in the features of the appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be assembled on another product so that the other product may regain or retain its original appearance.

Registration of an industrial design shall not confer on its owner rights in acts relating to products that have been introduced into the commerce of any country by the owner or another person authorized by the right holder or with economic ties to that patent owner. For these purposes, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence on the other, either directly or indirectly, with respect to the working of the design or when a third party is able to exert that influence over both persons.

The following may not be prohibited as a result of the rights awarded by the registration of an industrial design:

(a) acts performed in a private circle for non-commercial purposes;

(b) acts performed for scientific research, education, academic or experimental purposes;

(c) use of objects on board foreign aircraft, land vehicles or waterborne vessels that temporarily or accidentally penetrate the air space, territory or territorial waters of Djibouti.

Chapter V

Transfer and loss of rights

Section I - General provisions

Article 124

The rights deriving from industrial designs may be transferred either in full or in part.

They may be the subject, either in full or in part, of the grant of an exclusive or non-exclusive license for use, as well as an encumbrance.

The rights conferred by the registration of an industrial design may be asserted against a licensee who infringes one of the limits of his license imposed in accordance with the previous paragraph.

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

Acts comprising transfer or a license covered by the first two paragraphs above shall be recorded in writing, on pain of invalidation.

Article 125

To be binding on third parties, any acts transferring, amending or affecting the rights deriving from an industrial design must be entered in a register known as the "National Register of Industrial Designs" kept by the Djibouti Office of Industrial and Commercial Property.

However, an act shall be binding before such entry on third parties who have acquired rights after the date of the act but who had notice thereof when they acquired the rights.

Acts amending the ownership of the industrial design or the enjoyment of the rights deriving therefrom, such as assignment, licensing, the making or assignment of an encumbrance or the surrender thereof, seizure, validation and lifting of seizure, shall be entered in the register at the request of one of the parties to the act.

For the entry of references following a court decision which has become final, the registrar office shall send, within 15 days after the date of said decision, to the Djibouti Office of Industrial and Commercial Property, a full set of decisions free of charge relating to the existence, scope and exercise of the rights deriving from the protection afforded under this Title.

The formalities to be completed and the documents to be attached to requests for entries shall be fixed by regulation.

Article 126

Any interested person may obtain an excerpt from the National Register of Industrial Designs.

Section II - Seizure

Article 127

The seizure of an industrial design shall be effected on the basis of an order handed down by the President of the court ruling in summary proceedings provided for in Article 1, paragraph 1, of the decision of March 11, 1969 on protective measures.

The order authorizing the seizure shall be notified to the design owner, the Djibouti Office of Industrial and Commercial Property and those persons holding rights in the design entered in the National Register of Industrial Designs.

Once notice of seizure has been given, no subsequent amendment of the rights deriving from the design shall be binding on the attaching creditors.

Notice of seizure shall be given within 15 days of the order, on pain of invalidation.

On pain of invalidation of the seizure, the attaching creditors shall have 15 days as from the date of the entry of the seizure in the National Register of Industrial Designs to give such notice to file proceedings before the court for confirming the validity of the seizure or the action on merit.

The Court shall have the authority to order the placing of the design for sale by converting the garnishment into distraint.

Section III – Miscellaneous provisions

Article 128

The exclusive right to work deriving from the industrial design protected by this Title shall end with the expiry of a maximum time period of 15 years from the date of initial filing.

Article 129

The owner of an industrial design may, at any time, waive the protection of his industrial design by means of a written declaration addressed to the Djibouti Office of Industrial and Commercial Property.

Waiver may be limited to only part of the industrial designs if the filing covers several industrial designs.

Where the industrial design is jointly owned, waiver may only be effected if it is required by all of the joint owners.

If licenses or encumbrances have been entered in the National Register of Industrial Designs, the declaration of waiver of registration shall only be entertained if it is accompanied by the consent of the holders of the rights entered.

Article 130

Any interested party, including the Public Prosecutor's Office, may by means of a written and reasoned request invoke lapse of the registration of an industrial design before the court, that was effected in violation of the provisions of Articles 103, 104, 107 and 112.

Chapter VI

Publication of industrial designs

Article 131

The Djibouti Office of Industrial and Commercial Property shall publish an official catalog of all industrial designs registered, which shall contain references to the acts referred to in the first paragraph of Article 125 above.

TITLE V

TRADEMARKS AND SERVICE MARKS

Chapter I

Scope

Article 132

Trademarks and service marks shall be signs suitable for graphic representation used to distinguish the goods or services of a natural person or legal entity in trade. The following may constitute such signs:

((a) denominations in all forms such as words, combinations of words, patronymic names and geographical names, pseudonyms, letters, figures, slogans, acronyms;

((b) figurative signs such as drawings, labels, seals, borders, reliefs, holograms, logos, computer generated imagery;

((c) forms, in particular those of the product or its packaging or those characterizing a service;

((d) arrangements, combinations of colors or color shades;

((e) audible signs such as sounds or music.

Article 133

The distinctive nature of a sign designed to constitute a mark shall be assessed in respect of the designated goods or services.

The following shall be devoid of any distinctive nature:

((a) signs which can be used in trade to designate a characteristic of the good or service, and in particular the species, quality, quantity, intended purpose, value, geographical source or the time of production of the good or provision of service;

((b) signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;

((c) signs consisting exclusively of the forms imposed by the very nature or the function of the good in achieving a technical result, or conferring its substantial value thereon;

(d) signs which consist exclusively of signs or names constituting the generic or technical designations of products or services as considered;

(e) signs which consist of a color in isolation that is not in any way confined within a specific shape.

Article 134

The following may not be adopted as marks or elements of marks:

(a) signs excluded in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property, as well as any sign reproducing the armorial bearings, flags, insignia or official emblems of the Republic or of the other member countries of the Paris Union, the acronyms or names of the United Nations Organization and international organizations which have been adopted by them or which have already been the subject of international agreements in force designed to ensure their protection, official control and warranty signs, national or foreign decorations, Djiboutian or foreign coins or banknotes, as well as any heraldic imitations;

(b) signs which are contrary to public order or morality, or whose use is legally prohibited;

(c) signs which are liable to deceive the public, particularly as regards the nature, quality or geographical origin of the goods or services.

Article 135

No natural or manufactured products bearing either on themselves or on their packaging, cases, bundles, envelopes, bands or labels, a mark, name, sign, stamp, label or decorative pattern containing a reproduction of the signs referred to in Article 134 above shall be authorized to enter the territory of Djibouti, and may not be accepted under customs regimes or in free zones.

Article 136

It shall be unlawful to adopt signs infringing prior marks, in particular:

((a) an earlier mark registered or well known as defined by Article 6*bis* of the Paris Convention for the Protection of Industrial Property and Article 16(2) and (3) of the TRIPS Agreement;

((b) a name or company name, if this could create confusion in the mind of the public;

((c) a trade name or brand name known throughout the national territory, if this could create confusion in the mind of the public;

((d) a protected appellation of origin or geographical indication;

((e) copyright;

((f) the rights deriving from a protected industrial design;

((g) the rights relating to the personality of a third party, in particular his patronymic name, pseudonym or image;

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

Article 137

The nature of the goods or services for which the mark is intended may in no case be an obstacle to the registration and validity of this mark.

Article 138

The mark, shall be optional, unless provided otherwise by legislation.

Chapter II

Right to the mark and procedure for filing and registering the mark

Section I - Right to the mark

Article 139

Ownership of the mark shall be acquired through registration. The mark may be acquired in joint ownership.

Article 140

The provisions of Articles 77 to 79 above shall apply to, trademarks and service marks.

Article 141

Where a registration has been requested either fraudulently in respect of the rights of a third party or in violation of a statutory or treaty obligation, any person who claims to assert a right in the mark may bring legal proceedings for ownership.

Unless the applicant has acted in bad faith, the proceedings for ownership shall be statute-barred three years after the date of entry of the mark in the National Register of Marks referred to in the first paragraph of Article 156 below.

Article 142

Only marks which have been duly filed and registered by the Djibouti Office of Industrial and Commercial Property shall qualify for the protection granted by this Law, starting from their date of filing.

Registration of a mark shall give rise to the establishment of an industrial property title known as "certificate of registration of a trademark or service mark", filed and registered in the conditions and forms prescribed in Section II of this Chapter.

Section II - Procedure for registering the mark

Article 143

Any person wishing to obtain a certificate of registration for a mark must file with the Djibouti Office of Industrial and Commercial Property a mark registration application in the conditions provided for under this Section.

The application for registration of a mark must comprise on the date of its filing:

- ((a) an implicit or explicit request for registration of a mark;
- ((b) details or data that make it possible to establish the identity of the applicant or to enable the Office to make contact with the applicant;
- ((c) the mark for which registration is sought, or a reproduction of the mark in the case of a mark with special graphic elements, shape or color, or a figurative, composite or three-dimensional mark with or without color; for marks that are not visible by sight, a graphic representation of the mark;
- ((d) the list of products or services for which the protection of the mark is sought; and
- ((e) proof of payment of the prescribed fees.

The date of receipt of the application shall be considered the filing date, provided that the conditions provided for in the previous paragraph have been met. In the absence of one of the elements listed in the previous paragraph, the application shall be considered not to have been filed and the filing date shall not be retained.

In addition to the elements mentioned in the second paragraph, for the purposes of mark registration the application shall contain:

- (a) the name and address of the agent and a reference to the power of attorney, or other communication in which the appointment of that agent is or was effected;
- (b) the class or classes of products or services, according to the International Classification of Goods and Services, for which trademark protection is being requested, so as to precede the respective products and services which shall be presented in the order of classes applicable;
- (c) signature of the applicant or his agent.

The necessary formalities and the documents to be attached to the requests for entries shall be fixed by regulation.

Where the application for a mark contains at least the documents provided for in the second paragraph above, the request for registration of a mark, shall be entered in chronological order of filing in the National Register of Marks referred to in the first paragraph of Article 156 below, with a date and number of filing.

Article 144

The Djibouti Office of Industrial and Commercial Property shall examine whether the application meets the conditions provided for in Article 143.

If the Office establishes that, at the time the application is received, the conditions in Article 143 have not been met, it must write to invite the applicant to make the necessary correction within three months. If one of the elements listed in the second paragraph of Article 143 is missing, the retained filing date shall then be the date when the requested correction is received. However, if the correction is not made, the application shall be considered not to have been filed.

Where the registration application for a mark contains the documents provided for in this article, the request for the registration of a mark, as referred to above, shall be entered in chronological order of filing in the National Register of Marks referred to in the first paragraph of Article 156 below, with a date and number of filing.

Article 145

A receipt recording the date on which the documents referred to in Article 143 above have been provided shall be delivered to the applicant or his agent immediately following the filing of the request.

Article 146

Upon substantiated request, the applicant may at any time seek the correction of mistakes in expression or transcription as well as substantive errors detected in the documents filed, with the exception of the mark and the list of goods and services, save to restrict or limit it, which may not be amended. Nonetheless, the applicant may restrict or limit that list.

The requests for correction mentioned in paragraph 1 of this Article shall be submitted in writing and shall include the changes proposed. This shall be subject to the payment of a set fee.

Article 147

Any request for registration which:

- (1) does not satisfy the provisions of Articles 133, 134 and 143 above;
- (2) has not been corrected in accordance with Article 144 above;

shall be rejected.

A reference to said rejection shall be entered in the National Register of Marks referred to in the first paragraph of Article 156 below.

Article 148

Where the application to register a mark is not rejected under Article 147 above, the mark shall be registered by the Djibouti Office of Industrial and Commercial Property.

The date of registration shall be the date of filing of the registration application.

Filing shall give rise to registration in the National Register of Marks referred to in the first paragraph of Article 156 below.

Article 149

Further to the registration provided for in Article 148 above, a report recording the filing and mentioning the date of said filing and the attached documents shall be drawn up by the Djibouti Office of Industrial and Commercial Property along with the certificate of registration of the mark, accompanied by the design of the registered mark. The report and the certificate of registration shall be conveyed or notified to the applicant or his agent.

Article 150

Any interested person may obtain, upon written request, an official copy of the mark, upon production of the design of the registered mark.

Chapter III

Effects of the registration of the mark

Article 151

Registration of a mark shall be valid starting from the date of filing of the registration application for a period of ten years, renewable indefinitely. It may be renewed upon request and subject to the payment of the set renewal fee. Registration must be renewed in the six months prior to the expiry of its term of validity.

However, a grace period of six months starting from the expiry of the term of validity shall be accorded to the applicant to make said renewal, subject to payment of a set surcharge. Renewal shall begin as from the expiry of the term of validity of registration. The registration shall remain fully valid during the grace period.

Where the request for renewal concerns only part of the goods or services covered by the registration, or includes a restriction or limitation of the list of goods or services, the registration of the mark shall be renewed only in respect of the remaining goods or services in question. Where appropriate, the renewal request shall indicate the goods or services removed or the nature of the restriction or limitation

The registration of a mark may be renewed if it does not contain either an amendment of the mark or an extension to include goods or services other than those designated in the request for initial registration of the mark.

Any amendment of the sign or extension of the list of goods or services designated must give rise to a new filing.

Article 152

Registration of a mark shall confer upon its owner the right to prohibit any third party from using any of the following in the course of trade without his consent:

(a) a sign identical to the mark for goods or services which are identical to those covered by the registration;

(b) any sign where, because of its identity with, or similarity to, the registered mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion shall include the likelihood of association between the sign and the mark;

(c) any sign which is identical with, or similar to, the registered mark in relation to goods or services which are not similar to those for which the mark is registered, where the mark has a reputation in Djibouti and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the mark.

The following, inter alia, may be prohibited if the conditions listed in paragraph 1 are met:

((a) affixing the sign to the goods or to the packaging thereof;

((b) offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

((c) importing or exporting the goods under the sign;

((d) using the sign on business papers and in advertising.

The right awarded by the mark shall only be binding on third parties from the publication of the mark registration.

Article 153

The registration of the mark shall not entitle the owner to prohibit a third party from using, in the course of trade,

((a) his own name or address;

((b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;

((c) the mark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.

Article 154

The registration of a mark shall not confer on its owner the right to prevent its usage for products that have been introduced into the commerce of any country by the owner or another person authorized by the right holder or with economic ties to the patent owner. For these purposes, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence on the other, either directly or indirectly, with respect to the working of the patent or when a third party is able to exert that influence over both persons.

The previous paragraph shall not apply where there exist legitimate reasons for the owner to oppose further commercialization of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

Chapter IV

Transfer and loss of rights

Section I - General provisions

Article 155

The rights deriving from a registered mark may be transferred either in full or in part.

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

The rights conferred by the registration of the mark may be asserted against a licensee who infringes one of the limits of his license imposed in accordance with the previous paragraph.

Subject to the provisions of Article 141 above, transfer of the rights referred to in the first paragraph of this Article shall not infringe the rights acquired by third parties prior to the date of transfer.

Acts comprising transfer or a license, referred to in the first two paragraphs above, shall be recorded in writing, on pain of invalidation.

Article 156

To be binding on third parties, any acts transferring, amending or affecting the rights deriving from a registered mark must be entered in a register known as the "National Register of Marks", kept by the Djibouti Office of Industrial and Commercial Property.

However, an act shall be binding prior to such entry on third parties who have acquired rights after the date of this act with notice of the act when the rights were acquired.

Acts amending the ownership of a registered mark or the enjoyment of the rights deriving therefrom, such as assignment, licensing, the making or assignment of an encumbrance or the surrender thereof, seizure, validation and lifting of seizure, shall be entered with the Djibouti Office of Industrial and Commercial Property at the request of one of the parties to the act.

For entries of references further to a court decision which has become final, the Registrar's Office shall send, within 15 days following the date of said decision, to the Djibouti Office of Industrial and Commercial Property, a complete set of decisions free of charge relating to the existence, scope and exercise of the rights deriving from the protection provided for under this Title.

The formalities to be completed and the documents to be attached to requests for entries shall be fixed by regulation.

Article 157

Any interested person may obtain an excerpt from the National Register of Marks.

Section II: Seizure

Article 158

The seizure of a factory or service mark may be authorized by an order from the President of the Court ruling in summary proceedings provided for in Article 1, paragraph 1, of the decision of March 11, 1969 on protective measures.

The order authorizing the seizure shall be notified to the mark owner, the Djibouti Office of Industrial and Commercial Property and those persons holding rights in the mark and recorded in the National Register of Marks.

Once notice of seizure has been given, no subsequent amendment of the rights deriving from the mark shall be binding on the attaching creditors.

Notice of seizure shall be given on request within 15 days of the order, on pain of invalidation.

On pain of invalidation for the seizure, the attaching creditors shall in addition have 15 days as from the date of the entry of the seizure in the National Register of Marks to give such notice to file proceedings before the court for confirming the validity of the seizure or the action on merit.

The Court shall have the authority to order the placing of the mark for sale by converting the garnishment into distraint.

Section III – Miscellaneous provisions

Article 159

The owner of a registered mark may, at any time, by written declaration, waive the effects of this registration for all or part of the goods or services covered by the registration.

Where the mark is jointly owned, waiver may only be effected if it is required by all of the joint owners.

Where licenses and encumbrances have been entered in the National Register of Marks, the declaration of waiver shall only be entertained if it is accompanied by the consent of the holders of the rights entered.

Waiver shall be entered in the National Register of Marks.

Article 160

Any interested party, including the Public Prosecutor's Office, may bring proceedings to invalidate the registration of a mark made in violation of the provisions of Articles 132 to 134 above.

Only the owner of an earlier right may bring proceedings for invalidation on the basis of Article 136 above. However, such proceedings shall not be entertained if the mark has been filed in good faith and if the owner has tolerated its use in Djibouti for five years.

A decision to cancel shall have absolute effect.

Article 161

The owner of a well known mark for the purposes of Article 6*bis* of the Paris Convention for the Protection of Industrial Property and Article 16(2) and (3) of the TRIPS Agreement may demand the cancellation of the registration of a mark that is likely to create confusion with his own. Such action for invalidation shall be statute-barred five years after the date of registration of the mark, unless the registration has been requested in bad faith.

Article 162

An owner of a mark who, without proper reasons, has not made serious use of the goods or services covered by the registration, for an uninterrupted period of five years, shall be liable to the forfeiture of his rights.

The following shall be considered such use:

- ((a) usage in Djibouti with the consent of the owner of the mark registration;
- ((b) usage in Djibouti for products that have been marketed in accordance with the first paragraph of Article 154;
- ((c) use of the mark in an amended form which does not alter its distinctive nature;
- ((d) the affixing of the mark to goods or their packaging, solely with a view to export.

Any interested person may bring legal proceedings for forfeiture. If the petition concerns only part of the goods or services covered by the registration, forfeiture shall only cover the goods or services concerned.

Serious use of the mark which began or resumed after the five-year period referred to in the first paragraph of this Article shall not be an obstacle thereto if it was undertaken in the three months prior to the request for forfeiture and after the owner was informed of the possibility of a petition for forfeiture.

Proof of working must be provided by the owner of the mark registration for which forfeiture has been requested. It may be provided by any means.

Forfeiture shall come into force on the date of expiry of the five-year period referred to in the first paragraph of this Article. It shall have absolute effect.

Article 163

The owner of a mark registration, which due to his actions has become:

((a) the customary designation in trade for the goods or services;

((b) likely to mislead the public, in particular as to the nature, quality or geographical origin of the goods or services;

shall also be liable to the forfeiture of his rights.

Article 164

Any final court decision pronouncing the cancellation or forfeiture of a mark must be entered in the National Register of Marks.

Chapter V

Collective marks and certification marks

Section I - Scope

Article 165

A mark shall be known as collective if it may be used by any person who abides by the regulations for use laid down by the owner of the registration.

The certification mark shall be applied to the good or service which features in particular, as to its nature, properties or qualities, characteristics stipulated in the rules therefor.

Section II – Miscellaneous provisions

Article 166

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

Article 167

Collective marks and certification marks whose regulations for use are contrary to morality or public order shall not qualify for the protection afforded under this Chapter.

Article 168

The mark must be designated in the request for registration referred to in ((a) of the second paragraph of Article 143 above as a collective mark or a certification mark.

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

This copy must be produced either on the actual day of the filing or, where applicable, on the conditions and within the time period provided for in Article 143 above.

The owner of the collective mark or certification mark may, at any time, communicate in writing to the Djibouti Office of Industrial and Commercial Property any change made to the regulations governing the mark. A reference to such changes shall be entered in the National Register of Marks.

Article 169

The regulations referred to in the first paragraph of Article 166 above shall define the common characteristics or qualities of the goods or services which the mark shall designate, and the conditions in which and the persons by which it may be used.

Article 170

A certification mark may only be filed by a legal entity which does not manufacture, import or sell goods or services.

Article 171

Use of a certification mark shall be open to all persons, separate from the owner, who supply goods or services which meet the conditions set by the regulations.

Article 172

A certification mark may not be the subject of assignment, encumbrance or any enforcement measure. However, the Minister of Trade may authorize the transfer of the registration of a certification mark, if the transferee undertakes to exert effective control over the use of the mark. Transfer shall be recorded in the National Register of Marks.

Article 173

Where a certification mark has been used and has ceased to be protected by law, it

may neither be filed nor used in any way whatsoever before a period of ten years has elapsed.

Article 174

The invalidation of the registration of a certification mark may be pronounced by the court following a request from the Public Prosecutor's Office or at the request of any interested party, where the mark fails to meet one of the requirements stipulated in this Chapter.

The decision to cancel shall have absolute effect.

Chapter VI

Publication of marks

Article 175

The Djibouti Office of Industrial and Commercial Property shall publish an official catalog of all trademarks or service marks, collective marks and certification marks registered. It shall contain a reference to the acts provided for under the first paragraph of Article 156 above.

TITLE VI

TRADE NAMES, GEOGRAPHICAL INDICATIONS, APPELLATIONS OF ORIGIN AND UNFAIR COMPETITION

Chapter I

Trade names

Article 176

A "trade name" shall be understood as the distinctive appellation or sign under which an enterprise of a natural person or legal entity is operated.

Article 177

Names or designations which, by their nature or the use that may be made thereof, are contrary to morality and public order or are liable to deceive trade circles or the public as to the nature of the enterprise identified by that name, may not constitute trade names.

Article 178

Whether or not they are part of a mark, trade names shall be protected against any

subsequent use of the trade name by a third party by the provisions of the Civil Code and laws protecting against unfair competition.

Chapter II

Geographical indications and appellations of origin

Article 179

Geographical indication shall mean any indication that identifies a product as being originally from a territory or region or area within the territory, in cases where a quality, reputation or other specific characteristic of the product is essentially due to this geographical origin.

Article 180

“Appellation of origin” shall be the geographical name of a country, region or specific place used to designate a product originating therein whose quality, reputation or other given characteristics are due exclusively or essentially to the geographical environment, including natural and human factors.

Article 181

It shall, in particular, be unlawful to make:

((a) direct or indirect use of a false or deceptive indication of the source of goods or services, or the identity of the producer, manufacturer or supplier thereof;

((b) direct or indirect use of a false or deceptive geographical indication or appellation of origin, or to imitate a geographical indication or an appellation of origin, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by expressions such as “kind”, “type”, “imitation” or similar.

Article 182

Public action to repress the unlawful acts referred to in Article 181 may be brought by the Public Prosecutor’s Office. Action for damages may also be brought by any aggrieved party, natural person or legal entity, association or trade union, in particular by the producers, manufacturers or traders who may correctly identify their goods or services with the indication or appellation in question, or by the associations representing them for that purpose, without prejudice to the right to bring civil proceedings or request precautionary measures.

Chapter III

Unfair competition

Article 183

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

The following in particular shall be prohibited:

((a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

((b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

((c) 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.

Natural persons and legal entities shall have the right to prevent information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

((a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

((b) has commercial value because it is secret; and

((c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

When, as a condition of approving the marketing in Djibouti of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data is required, the origination of which involves a considerable effort, such data shall be protected against unfair commercial use. In addition, such data shall be protected against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data disclosed are protected against unfair commercial use.

Article 184

Acts of unfair competition may only give rise to civil proceedings under the conditions provided for in Article 195 below.

TITLE VII

TEMPORARY PROTECTION AT EXHIBITIONS

Article 185

Temporary protection shall be granted to inventions which may be patented, to improvements or additions deriving from a patented invention, to layout designs (topographies) for integrated circuits, to industrial designs and to, trademarks or service marks for goods or services which have been presented for the first time in

official, or officially recognized, international exhibitions organized on the territory of one of the countries of the International Union for the Protection of Industrial Property.

Article 186

Such protection, the term of which shall be fixed at six months after the official opening of the exhibition, shall have the effect of retaining, for the exhibitors or their successors in title, the right to claim during this period the protection to which their inventions, layout designs (topographies) for integrated circuits, industrial designs or marks would be legally entitled to benefit under the provisions of this Law.

The formalities which the exhibitors shall have to complete to qualify for temporary protection shall be fixed by regulation.

Article 187

The term of the temporary protection shall not be increased by the time periods for priorities provided for under Article 7 above.

TITLE VIII

LEGAL PROCEEDINGS

Chapter I

General provisions

Article 188

Any infringement of the rights of the owner of a patent, a certificate of addition, a certificate for a layout design (topography) for integrated circuits, a certificate of registration for an industrial design or a certificate of registration for a trademark or service mark, as defined in Articles 53, 54, 98, 122, 123, 153 and 154 above respectively, shall constitute infringement.

The offering for sale, marketing, reproduction, imitation, use, stocking with a view to use or marketing of an infringing product shall incur the liability of the infringer, regardless of whether the acts are committed by the manufacturer of the infringing article.

Article 189

Infringement proceedings may be brought by the owner of the patent, certificate of addition, certificate of layout design (topography) for integrated circuits, certificate of registration for an industrial design or certificate of registration for a factory mark, trade mark or service mark.

However, the beneficiary of an exclusive right to work may, unless the licensing contract provides otherwise, bring infringement proceedings where, after having been given formal notice to do so by a bailiff or registrar, the owner fails to bring such proceedings.

The owner shall be entitled to take part in any infringement proceedings brought by the beneficiary, in accordance with the previous paragraph.

Any licensee shall be entitled to take part in any infringement proceedings brought by the owner, for the purpose of receiving compensation for the harm which he has personally undergone.

Article 190

In the event of infringement of the rights provided for in Article 188, the court President, ruling according to summary proceedings, may prohibit, provisionally and subject to a coercive fine, the continuation of the alleged infringing acts, or make such continuation subject to the provision of guarantees to ensure compensation for the owner of the industrial property title or the licensee.

A request for prohibition or for the provision of guarantees shall be entertained only where the action appears to be well founded, and where it has been brought within a maximum period of 15 days as from the order on request.

The President of the court may make the prohibition subject to the provision by the plaintiff of guarantees to compensate the defendant for any prejudice suffered by the defendant where the infringement action is subsequently judged to be unfounded.

The President shall rule on condition that the matter be eventually referred back to him in case of any difficulty.

Article 191

The competent court shall be that of the place of real or elected domicile of the defendant, that of the place where his agent is established, or the court of the place where the Djibouti Office of Industrial and Commercial Property is established, if the defendant is domiciled abroad.

Article 192

The civil or criminal proceedings provided for under this Title shall be statute-barred three years after the acts behind such proceedings take place.

The initiation of criminal proceedings shall suspend the prescription of civil proceedings.

Article 193

The owner of one of the rights listed in Article 188 and registered with the Djibouti Office of Industrial and Commercial Property has the right to seek and obtain permission from the President of the Court of First Instance to appoint a bailiff, possibly assisted by an expert of his choice, to carry out a description or seizure of the goods or services alleged to have a mark put on them or which have been delivered or supplied to others causing damage to him under this Law.

The description or seizure shall be considered null and void if the complainer did not file a civil or criminal court case within 15 days, besides the extension of time-limits

on account of distance provided for by the Code of Criminal Procedure, without prejudice to any damages that may be claimed.

Article 194

Acts prior to the recording of the grant of invention patents, certificates of addition, certificates for layout designs (topographies) for integrated circuits, or the registration of industrial designs or the registration of trademarks or service marks in the registers kept by the entity responsible for industrial property shall not give rise to any proceedings stemming from this Law.

Article 195

In the event of infringement of these rights, the owner of any of the rights provided for in this Law may also request damages and the application of any other sanction provided for in civil law, particularly the seizure or destruction of counterfeit items and any equipment and instruments used to create or manufacture them, removal of the filing and registration, total or partial publication of the conviction in a newspaper appearing in Djibouti, at the expense of the unsuccessful party, and an injunction subject to penalty against the allegedly infringing acts.

Article 196

Persons convicted under the provisions of this Title may further be deprived, for a maximum period of five years, of the right of belonging to professional chambers.

Chapter II

Invention patents

Section I – Civil proceedings

Article 197

The owner of a compulsory license, referred to in Articles 60 and 66 above, may bring an infringement action where the patent owner fails to bring such action after having been served formal notice.

The beneficiary of an *ex officio* license referred to in Articles 69, 74 and 75 above may bring the infringement action where the owner fails to bring such action after having been served formal notice.

Article 198

The owner of an application for a patent or a certificate of addition deriving from a main patent, or the owner of a patent or a certificate of addition deriving from a main patent, shall be allowed to use any means of proving the infringement of which he claims to be a victim.

He may moreover, further to a writ issued by the President of the court for the place of infringement, give rise to a detailed description, with or without seizure, of the allegedly infringing goods or processes to be conducted by a bailiff, assisted by an expert, where appropriate.

The implementation of said writ may be subject to the provision of security by the applicant.

In the same writ, the President of the court may authorize a bailiff, assisted by a qualified expert, who shall be responsible for any declaratory examination needed to establish the origin, nature and scope of the infringement.

The same right shall be available to the beneficiary of an exclusive right to work on the condition laid down in the second paragraph of Article 189 of this Law, as well as, subject to the condition provided for in Article 197 above, to the beneficiary of a compulsory license or an *ex officio* license.

Where the petitioner fails to institute legal proceedings before the court within a maximum of 15 days as from the date of implementation of the writ, the detailed description, with or without seizure, shall be considered invalid as of right, without prejudice to the award of any damages.

Article 199

At the request of the aggrieved party, and provided that the measure is necessary to ensure the prohibition on continuing the infringement, the court may order the seizure, for the petitioner's benefit, of known infringing articles, which are the property of the infringer on the date of the prohibition's entry into force and, where applicable, that of the devices or means specifically intended for carrying out the infringement.

Due consideration shall be given to the value of the goods seized when calculating the compensation allocated to the beneficiary of the sentence imposed.

Section II – Criminal proceedings

Article 200

Any deliberate violation of the rights of a patent owner, as defined in Articles 53 and 54 above, shall constitute infringement and shall be punishable by the penalties provided for in Articles 301 to 303 of the Penal Code.

The court may also order additional penalties provided for in Articles 310 to 312 of the Penal Code.

Article 201

Those who have knowingly received, displayed, placed on sale or sold, introduced or exported known infringing goods, shall be liable to the same penalties as the infringers. The same shall apply to any assistance knowingly provided to the author of the offenses referred to above.

Article 202

The penalties provided for under Articles 200 and 201 above shall be increased to five years' imprisonment and a fine of 10,000,000 FD, or to only one of these two penalties, if the infringer is a salaried employee who has worked in the workshops or in the establishment of the patent owner.

Salaried workers who have associated themselves with the infringer after giving him information on the processes described in the patent shall be liable to the same penalties.

Article 203

Without prejudice, where applicable, to the more stringent penalties concerning violations of State security, anyone who knowingly infringes one of the prohibitions laid down in Article 42 above shall be punishable by a fine of 2,000,000 FD.

Chapter III

Layout designs (topographies) for integrated circuits

Article 204

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

Chapter IV

Industrial designs

Section I - Civil proceedings

Article 205

The owner of the industrial design shall have the possibility of providing proof by any means of the infringement of which he claims to be a victim.

He shall further be entitled, subsequent to a writ issued by the President of the court for the place of infringement, to give rise to a detailed description, with or without seizure, of the allegedly infringing goods to be conducted by a bailiff.

He may be assisted by a qualified expert in producing said description.

The implementation of said writ may be subject to the provision of a deposit by the applicant.

In the same writ, the President of the court may authorize a bailiff, assisted by a qualified expert, who shall be responsible for any declaratory examination needed to establish the origin, nature and scope of the infringement.

The same right shall be available to the owner of an exclusive right to work on the condition laid down in the second paragraph of Article 189 of this Law.

Where the applicant fails to bring proceedings before the court within a maximum of 15 days as from the day of implementation of the above writ, the detailed description, with or without seizure, shall become invalid as of right, without prejudice to the award of any damages.

Article 206

At the request of the aggrieved party, provided that the measure proves necessary to ensure the prohibition on continuing the infringement, the court may order the seizure, for the applicant's benefit, of known infringing articles, which are the property of the infringer on the date the prohibition enters into force and, where applicable, that of the devices or means specifically intended for carrying out the infringement. Due consideration shall be given to the value of the articles seized when calculating the compensation to be paid to the beneficiary of the sentencing.

Section II – Criminal proceedings

Article 207

Any deliberate violation of the rights of an industrial design owner shall constitute infringement and shall be punishable by the penalties provided for in Articles 301 to 303 of the Penal Code.

The penalty provided for in the first paragraph above shall be increased to five years' imprisonment and a fine of 10,000,000 FD if the infringer has worked for the aggrieved party.

The court may also order the additional penalties provided for in Articles 310 to 312 of the Penal Code.

CHAPTER V

Trademarks and service marks

Section I - Civil proceedings

Article 208

The owner of a registered mark or the beneficiary of an exclusive right to work shall be entitled, pursuant to a writ by the President of the tribunal authorizing the intervention of a bailiff, to either a detailed description with or without the taking of samples or to the seizure of the goods or services he claims have been marked, offered for sale, delivered or supplied to his detriment, in violation of his rights.

This description may be drawn up with the help of a qualified expert.

In the same writ, the President of the court may authorize any declaratory proceedings necessary to establish the origin, nature and scope of the infringement.

The implementation of said writ may be subject to the provision by the plaintiff of guarantees to indemnify the defendant for any prejudice suffered where the infringement action is subsequently judged to be unfounded.

Where the applicant fails to bring legal proceedings before the court within a maximum of 15 days as from the date of implementation of the above writ, the detailed description, or seizure, shall become invalid as of right, without prejudice to the award of any damages.

Article 209

Where it is necessary to establish that a good or service has been substituted for the one requested under a registered mark, the bailiff shall only be obliged to produce the writ provided for in Article 208 above after delivery of the good or service other than the one requested, and where the writ authorizes several establishments of substitution, only after the last delivery or last service.

Article 210

At the request of the aggrieved party, and provided that the measure is necessary to ensure the prohibition on continuing the infringement, the court may order the seizure, for the applicant's benefit, of known infringing goods which are the property of the infringer on the date of the prohibition's entry into force and, where applicable, that of the devices or means specifically intended for carrying out the infringement.

Due consideration shall be given to the value of the goods seized when calculating the compensation to be allocated to the beneficiary of the sentence imposed.

Section II – Criminal proceedings

Article 211

The following shall be considered infringers and punishable by two years' imprisonment and a fine of 2,000,000 FD:

- (1) those who have infringed a registered mark or have fraudulently affixed a mark belonging to another;
- (2) those who have used a mark without the authorization of the interested party, even with the addition of words such as "formula", "type", "system", "recipe", "imitation" or "kind", or any other similar indication likely to mislead the buyer;
- (3) those who have held without legitimate grounds goods which they knew bore an infringing or fraudulently affixed mark and who knowingly sold, placed on sale, supplied or offered to supply goods or services under such a mark;

(4) those who have knowingly delivered a good or supplied a service other than the one requested of them under a registered mark;

(5) those who have imported or exported products bearing an infringing or fraudulently affixed mark.

Article 212

The following shall be punishable by two years' imprisonment and a fine of 2,000,000 FD:

((a) those who, without infringing a registered mark, have made a fraudulent imitation thereof which is liable to deceive the buyer or who have used a fraudulently imitated mark;

((b) those who have used a registered mark bearing indications liable to deceive the buyer as to the nature, substantive qualities, composition or content in terms of useful components, the kind or origin of the article or good designated;

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

Article 213

Those who have included in their trademarks or service marks the signs prohibited under Article **134**((a) above without the authorization of the competent authorities, and those who have introduced into Djibouti, held, placed on sale or sold natural or manufactured products bearing said signs as a mark shall be punishable by two years' imprisonment and a fine of 2,000,000 FD.

Article 214

Any infringement of the rights of the owner of a certificate of registration of a trademark or service mark as defined, respectively, in Articles 153 and 154 above, may be the subject of proceedings ordered by the Public Prosecutor's Office of its own motion, without any complaint brought by a private party or rights holder.

Article 215

The court may also order additional penalties provided for in Articles 310 to 312 of the Penal Code.

Article 216

The penalties provided for under Articles 211 to 213 and 215 above shall apply in respect of collective marks and certification marks.

Chapter VI

TRADE NAMES, GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN

Article 217

Any usurpation or fraudulent use of a trade name, whether or not it forms part of a trademark or service mark, shall be punishable by the civil penalties provided for in Article 195 above.

Article 218

The unlawful acts referred to in Article 181 above shall be punishable by the penalties provided for in Article 301 of the Penal Code.

TITLE IX

TRANSITIONAL PROVISIONS

Article 219

This Law shall enter into force six months after publication of the texts adopted for its application and shall repeal all previous provisions relating to the same subject, as amended and updated, in particular:

- Law No. 64-1360 of December 31, 1964 on Factory Marks, Trademarks and Service Marks and the Decree of July 27, 1965;
- Law of July 14, 1909 on Industrial Designs;

Article 220

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

Article 221

Applications for registration of marks and for registration of industrial designs filed before the date of the entry into force of this Law, in accordance with the provisions of Law No. 64-1360 of December 31, 1964 on Factory Marks, Trademarks and Service Marks and the Law of July 14, 1909 on Industrial Designs shall be examined and the corresponding titles shall be granted in accordance with the provisions and formalities provided for by said Laws.

The said applications shall come into force as from the date of their filing.

Article 222

Filings and registrations of marks or designs validly carried out through the Registrar of the Court of First Instance prior to the entry into force of this Law shall continue to be in force until the expiry of the period of protection following filing, but must be transferred by the Registrar to the Djibouti Office of Industrial and Commercial Property, so that they can be recorded in the Register.

Owners may themselves deliver to the Office a copy of their previous filings and registrations, which will remain protected for the remainder of the period left since they were filed with the Registrar.

In the event of transferring or renewing a filing or registration previously carried out through the registrar, owners may claim the rights of priority for their previous filings with the Court's Registrar.

Article 223

The regulations for the application of this Law, particularly the fees to be received by the Office and allocated for its operating expenses, shall be fixed by Decree.

Article 224

This Law shall be published in the Official Gazette of the Republic of Djibouti and shall enter into force upon its enactment.

Done in Djibouti, July 19, 2009

**PRESIDENT OF THE REPUBLIC,
HEAD OF THE GOVERNMENT
ISMAIL OMAR GUELLEH**

(signed and stamped)