Instituto Nacional de la Propiedad Industrial

National Industrial Property Institute (INPI)

BUENOS AIRES, JUNE 13, 2013

Ref. Note DIAEM 280/2013

S/ 20 SCP WORKING DOCUMENTS

A: DIRECTORATE FOR MULTILATERAL ECONOMIC AND G-20 AFFAIRS

Through the present document we submit the responses to the reference document, in order to allow the working documents of the Republic of Argentina to be processed during the Twentieth Session of the Standing Committee on the Law of Patents (SCP).

(A) Questionnaire on Quality of Patents

The present document was prepared on the basis of the questions concerning the issue of "QUALITY OF PATENTS" contained in the **Annex to document SCP/18/9**, following the order in which the questions contained in said document are laid out, with answers being preceded by the letter 'A'.

Section I:

1. In the view of the Republic of Argentina, the concept of quality is based on three pillars: (1) high standards concerning patentability requirements; (2) full disclosure of the invention, so that it can be replicated without further trials or studies; (3) a perfect definition of the scope of the patent.

2. A: Yes

As mentioned above, in our view, a patent has 'quality' when: it has been examined employing patentability requirements of a high standard; there is 'full' disclosure of the invention, that is to say it can be replicated without further trials or studies; and, finally, the scope of the patent is clearly defined.

(a) A: Yes

In order for an invention to have inventive step, during the examination process there is a need to take into account not only any information disclosed in the prior art, but also any

knowledge that a person skilled in the art may consider to be obvious in light of the prior art. That is to say, the examiner must proceed based on the documentation arising from the search, while also applying the experience and knowledge of the person skilled in the relevant technical matter.

(b) A: Yes

The description of the invention must allow for the reproduction of said invention without the need for further experimentation.

3. A: Yes

In our view, a patent has 'quality' when: it has been examined employing patentability requirements of a high standard; there is 'full' disclosure of the invention, that is to say it can be replicated without further trials or studies; and, finally, the scope of the patent is clearly defined.

(a) A: Yes

Pre-search procedure:

When considering search requests, the examiner must determine the subject matter of the invention claimed. In this regard, the examiner must analyze the claims in light of the description and drawings. Moreover, the examiner must examine the documents cited in the request under consideration, in order to determine whether said documents are cited as the starting point of the invention, or as showing the prior art, or as alternative solutions to

the problem concerned, or when they are necessary for a correct understanding of the request.

Search strategy:

Once the subject matter of the invention has been determined, as previously stated, the examiner must select the classification codes to be consulted for the search, in all the directly-relevant and similar fields.

Often various search strategies are possible and the examiner must exercise his judgment based on his experience and knowledge of the search archives in order to select the most appropriate search strategy for the case under consideration, and establish the order in which the different classification units will be consulted. Preference must be given to the units in which the probability of finding relevant documents is higher. Preference will normally be given to the main technical field of the application and the classification units closest to the specific examples of the claimed invention will be dealt with first. The examiner must carry out the search, paying attention mainly to the assessment of the requirements of novelty but, at the same time, to any prior art document which may be useful for the assessment of inventive step.

The examiner must assess the results of his search continuously and, if necessary, reformulate the subjects of the search as a result. The selection of the classification codes to be searched, or the order of the search, may also need to be altered during the search as a

result of intermediate results obtained. The examiner must also use his judgment, taking into account the results obtained, and decide at any time during or after the systematic search, whether he should approach the search documentation in a different manner.

In turn, if the patent application in question has been examined by another patent office, the search performed by that office is consulted as another working instrument.

(b) In order to ensure that the search has been carried out correctly, the relevant instructions issued under the Guidelines on Patenting are employed. However, the application is subject to quality control by the area coordinator, who checks, the quality of the search carried out, among other things.

(c) A: Yes

On joining the Institute, all staff members are provided with training concerning the legal provisions governing the subject and they constantly receive updates in this regard.

In turn, in order to ensure quality in terms of the application of the legal provisions, the Republic of Argentina has Guidelines on Patenting containing the national criteria concerning the content and interpretation of the applicable regulations (it should be pointed out that, in the case of issues with regard to which the various ministries of

Argentina have shared competencies, the criteria for patentability set out in the Guidelines were jointly adopted by the ministries involved, in accordance with the international agreements to which the Republic of Argentina is a party and the prevailing regulations concerning the subject). All National Patent Authority staff members are familiar with and use the Guidelines on Patenting as a working instrument on a daily basis.

Finally, the Patent Office has an Office of the Patent Legal Advisor, which performs assessments and issues opinions concerning the various legal issues brought to its attention.

(d) Should it be deemed necessary, in addition to the routine examinations, there is also the possibility of organizing meetings between the owners of the applications and the examiner or coordinator responsible for the case.

(e) A: Yes

The legal provisions applying to patents have been made available to the public on the web site of the Institute. Likewise, meetings are held on a regular basis with the industrial property agents, during which various issues linked to the Office are addressed, including the Office's regulations.

It should be pointed out that any regulations, rules or circulars issued by the National Patent Authority are published in the Patent Gazette, on the Institute's web site and if need be, in the Official Gazette.

4. The criteria employed by the national jurisdiction are the same as those employed by the National Industrial Property Institute (INPI) and set out in point 1.

5. In order to guarantee patent quality at the national level, the INPI was ordered to prepare Guidelines on Patenting and commissions were established with regard to the issues for which there were shared competences between various ministries in order to draft said Guidelines. Thus, Standards were issued concerning the examination of the patentability of patent applications. Said Standards provide examiners with guidance on how to: apply the patentability requirements; ensure that patentability requirements are of a high standard; and, ensure that there is full disclosure of the invention. The measures adopted guarantee the quality of the patents granted.

6. At the level of the National Patent Authority, alongside the Standards and the Guidelines on Patenting, which are an essential tool in terms of ensuring the quality of patents, there are also technical coordinators for the various areas. The job of said coordinators is to carry out various checks in order to ensure the quality of the examiners' examinations and rulings.

Section II: Technical infrastructure development

7. All patent examiners are university graduates and many of them have PhDs or Masters degrees in the fields in which they work.

8. On joining the Institute, the examiners are provided with training concerning the legal provisions governing the subject and they constantly receive updates in this regard. Examiners can also refer to the Guidelines on Patenting. The Guidelines contain not only the regulations for patents that govern the various stages of the application process, but also the criteria employed by the Office. Finally, there is the Office of the Patent Legal Advisor, an entity which is made up of a body of lawyers specialized in patent regulations and which provides examiners with legal advice.

9. The Patent Office holds workshops for inventors on a monthly basis, in order to ensure the quality of the patents that arise. Likewise, applicants have access to the Guidelines to Patenting, which are published on the Internet and which set out the application procedure, the relevant regulations, the way in which cases are examined, etc.

10. The examiners have access to the espa@cenet, EPOLINE, USPTO and Japanese Patent Office databases, as well as to documents digitalized by the Office itself and the Office's own reference library.

Moreover, it should be pointed out that, under the patent processing procedure in our country, third parties are allowed to submit observations concerning the granting of the patent during the procedure. As a result, in many cases, third parties provide scientific documents, chemical analyses, proof of the commercial exploitation of the invention, etc. during the application processing procedure.

Section III: Process improvement:

11. The parameters employed to assess the quality of the patents granted are the following: the patent must have been examined in accordance with the Law on Patents and its respective Regulations, in light of the criteria and procedures set out in the patent Guidelines and Standards (patentability requirements, scope of the list of claims, disclosure, support in the specification, search criteria, etc.).

The area technical coordinators are responsible for checking the points referred to above.

12. The following are the parameters for the assessment of the quality of the work of the examiners: the case must have been examined in accordance with the Law on Patents and its respective Regulations, in light of the criteria and processes set out in

the patent Guidelines and Standards (patentability requirements, scope of the list of claims, disclosure, support in the specification, search criteria, etc.).

13. In the first instance, the quality of the examiners' work is assessed by the area coordinators (who draw up reports in that regard) and in the second instance by the Sub-Commissioner and Commissioner for Patents.

Finally, the Office assesses the quality of the patents its grants or refuses in light of the legal rulings that force the Authority to revoke decisions it has taken (with the courts either nullifying or ordering the granting of patents).

14. We refer to the information provided above.

15. The Office uses foreign search and examination work as a further working tool when examining national applications.

16. When using foreign work, the Office is faced with the challenge of dealing with patentability criteria and standards in terms of patentability requirements that in may cases differ from those employed in our country.

17. In order to overcome the obstacles to using foreign search and examination work, we should harmonize all the legislations and criteria of the various patent offices in terms of patentability. However, this is unlikely to happen.

(B) EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS.

REPLY OF THE REPUBLIC OF ARGENTINA TO THE QUESTIONNAIRE PREPARED BY THE SECRETARIAT OF THE STANDING COMMITTEE ON THE LAW OF PATENTS

SECTION I: GENERAL

Legal standard used to determine whether an invention is patentable:

Law No. 24.481 on Patents. Text confirmed by Decree 260/96- Annex I (regular font) and Regulation Law Annex II (italics)

ARTICLE 4 - Inventions for goods or procedures shall be patentable, provided that they are novel, involve an inventive step and are industrially applicable.

(a) For the purposes of this Law, an invention shall be considered to be any human creation which allows subject matter or energy to be transformed for the benefit of humanity.

(b) Similarly, any invention which is not included in the prior art shall be considered novel.

(c) Prior art shall mean all the technical knowledge which has been made public prior to the patent application filing date or, where appropriate, the recognized priority date, by means of an oral or written description, use, or any other means of dissemination or information, in the country or abroad.

(d) An inventive step will be involved where the creative process or its results are not obvious from the prior art for a person with average skills in the technical field concerned.

(e) An invention will be industrially applicable where the subject matter of the invention leads to a result or an industrial product being obtained, the term industry including agriculture, forestry, cattle breeding, fishing, mining, actual conversion industries and services.

Exclusions from Patentability:

Law:

ARTICLE 6 – The following shall not be considered inventions for the purposes of this Law:

(a) discoveries, scientific theories, and mathematical methods;

(b) literary or artistic works or any aesthetic creation, as well as scientific works;

(c) plans, rules and methods for the practice of intellectual activity, for games or economic-commercial activities, as well as computer programs;

(d) the manner of presenting information;

(e) methods of surgical, therapeutic or diagnostic treatment applicable to the human body and to animals;

(f) the juxtaposition of known inventions or mixtures of known products, or alteration of the form, dimensions or materials thereof, except where in reality they are so combined or merged that they cannot function separately or where their particular qualities or characteristic have been modified so as to produce an industrial result not obvious to a person skilled in the art;

(g) all living material and substances preexisting in nature.

Regulation:

ARTICLE 6 – Plants, animals and the essentially biological processes for their reproduction shall not be considered to be patentable material.

Law:

ARTICLE 7 – The following are unpatentable:

(a) inventions whose exploitation in the territory of the REPUBLIC OF ARGENTINA should be prevented so as to protect public order or morality, the health or life of persons or animals, or to ensure the conservation of plants or the avoidance of serious damage to the environment;

(b) biological and genetic material occurring in nature or derived therefrom by reproduction, and genetic reproduction processes replicating nature.

Regulation:

ARTICLE 7 – THE NATIONAL EXECUTIVE may prohibit the manufacture and commercialization of inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.

Exclusive rights granted with a patent, under the applicable laws:

Law:

ARTICLE 8 – The right to the patent shall belong to the inventor or to his assignees, who shall have the right to assign or transfer said right by any lawful means and to conclude licensing contracts. A patent shall confer on its owner the following exclusive rights, without prejudice to the provisions contained in Articles 36 and 99 of the present Law:
(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from carrying out the acts of: making, using, offering for sale, selling, or importing the product that is the subject matter of the patent;

(b) where the subject matter of the patent is a process, the owner of a process patent shall have the right to prevent third parties not having the owner's consent from carrying out the act of using the process and the acts of: using, offering for sale, selling, or importing for these purposes the product obtained directly by that process.

Regulation:

ARTICLE 8 – *The applicant may mention in his application the name(s) of the inventor(s) and request that it/they be included in the publication of the patent application, in the industrial property title granted and in the publication of the patent or utility model carried out.*

Patent owners who learn by any means of the importation of goods in violation of the rights accorded them by the Law shall have the right to bring a legal action before the appropriate administrative or judicial entity.

Law:

ARTICLE 9 - Unless otherwise proven, the inventor shall be presumed to be the natural person(s) designated as such in the patent application or utility model certificate. The inventor or inventors shall have the right to be mentioned in the corresponding title.

Regulation:

ARTICLE 9 – The inventor or inventors who has/have assigned his/their rights may present himself/themselves at any time during the process and request to be mentioned in the corresponding title, incontrovertibly establishing his/their status as the inventor/inventors. The assignee shall be notified of said presentation within a PERIOD of THIRTY (30) consecutive days of the date on which it was carried out. Should there be opposition, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall issue a ruling within THIRTY (30) consecutive days of the opposition of the notification or of the date on which the proof required in order to clear up the matter concerned was produced.

SECTION II: PRIVATE AND/OR NON-COMMERCIAL USE

Law:

ARTICLE 36 - The right conferred by a patent shall not have any effect against:

(a) a third party who, in the private or academic sphere and for non-commercial purposes, engages in scientific or technological research activities for purely experimental, testing or teaching purposes, and to that end manufactures or uses a product or a process identical to the one patented.

SECTION III – EXPERIMENTAL USE AND/OR SCIENTIFIC RESEARCH

Law:

ARTICLE 36 - The right conferred by a patent shall not have any effect against:

(a) a third party who, in the private or academic sphere and for non-commercial purposes, engages in scientific or technological research activities for purely experimental, testing or teaching purposes, and to that end manufactures or uses a product or a process identical to the one patented.

SECTION IV – PREPARATION OF MEDICINES

Law:

ARTICLE 36 - The right conferred by a patent shall not have any effect against:…

(b) the preparation of medicines by an authorized professional person and by unit following a medical prescription, or acts relating to medicines so prepared.

SECTION V – PRIOR USE

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Law:

ARTICLE 101 - ….

The patent owner shall have the exclusive right to his invention FIVE (5) years after the publication of the present law in the Official Gazette, unless the third party or third parties making use of his invention without his authorization can guarantee the full supply of the domestic market at the same current prices. In such a case, the patent owner shall only have the right to receive a fair and reasonable reward from the third parties making use of the patent from the date of its grant to its expiry. If there is not agreement between the parties, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall set said reward under the terms of Article 43. The provisions contained in this paragraph shall be applied unless said paragraph is amended in order to implement decisions of the World Trade Organization (WTO) adopted in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)/General Agreement on Tariffs and Trade (GATT) with which compliance is mandatory for the Republic of Argentina.

Regulation:

ARTICLE 101. I. - ...

II. – As of the date of expiry of the transition period, anyone wishing to limit the remedies available to a holder of rights in protected subject matter must have initiated acts of

exploitation or have made a significant investment concerning said acts prior to January 1, 1995. Should this be the case, the patent owner shall have the right to receive the reward provided for under Article 102(3) of the Law. Authorization cannot be granted if the patent owner guarantees full supply of the domestic market at the same current prices. The provisions of this paragraph shall be applied unless said paragraph is amended in order to implement decisions of the World Trade Organization (WTO) with which compliance is mandatory for the Republic of Argentina.

SECTION VI –USE OF ARTICLES ON FOREIGN VESSELS, AIRCRAFT AND LAND VEHICLES

Law:

ARTICLE 36 - …

(d) The use of inventions patented in our country on foreign land vehicles, vessels or aircraft accidentally or temporarily travelling in the jurisdiction of the REPUBLIC OF ARGENTINA, if they are used exclusively for the needs of said vehicles.

SECTION VII –ACTS FOR OBTAINING REGULATORY APPROVAL FROM AUTHORITIES

Law:

ARTICLE 98 – This Law does not provide for exemption from compliance with the requirements established under Law No. 16.463 on authorization to prepare and commercialize pharmaceutical products in the country.

Regulation:

ARTICLE 98 – Authorization to prepare and commercialize pharmaceutical products must be requested from the MINISTRY OF HEALTH AND SOCIAL ACTION, while authorization concerning agro-chemical products must be requested from the ARGENTINIAN INSTITUTE OF PLANT HEALTH AND QUALITY of the DEPARTMENT OF AGRICULTURE, FISHING AND FOOD of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES.

SECTION VIII – EXHAUSTION OF PATENT RIGHTS

Law:

ARTICLE 36 - The right conferred by a patent shall not have any effect against:

(a)…(b)…

(c) Anyone acquiring, using, importing or in any way marketing the patented product or the product obtained by means of the patented process, after said product has been lawfully placed on the market in any country. It shall be understood that the marketing is lawful if it is in accordance with Part III, Section 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)/General Agreement on Tariffs and Trade (GATT).

Regulation:

ARTICLE 36 – For the purposes of Article 36(c) of the Law, the owner of a patent granted in the REPUBLIC OF ARGENTINA shall have the right to prevent third parties from carrying out acts of manufacturing, using, offering for sale or importing into the territory the product the subject of the patent without his authorization, as long as said product has not been lawfully placed on the market in any country. The product shall be deemed to have been lawfully placed on the market when the licensee authorized to market it in the country shall prove that he has been so authorized by the owner of the patent in the country of acquisition, or by a third party authorized to market the product. The marketing of the imported product shall be subject to the provisions of Article 98 of the Law and this Regulation.

SECTION IX – COMPULSORY LICENSES AND/OR GOVERNMENT USE

Law:

ARTICLE 42 – Where a proposed user has made efforts to obtain a license from the owner of the patent under reasonable commercial terms and conditions under the terms of Article 43 and such efforts have not been successful following a period of ONE HUNDRED AND FIFTY (150) consecutive days as of the date on which the corresponding license was requested, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE may allow other uses of that patent without the authorization of its owner. Without prejudice to the above information, there is an obligation to notify the authorities established by Law No. 22.262, or the law amending or replacing Law No. 22.262, which protects free competition for the corresponding purposes.

Regulation:

ARTICLE 42 – Once the PERIODS established in Article 43 of the Law have expired, if the invention has not been exploited, except in the case of force majeure, or if effective and

serious preparations have not been made to work the patented invention or if the exploitation of the patented invention has been interrupted for more than one year, anyone may request the NATIONAL INDUSTRIAL PROPERTY INSTITUTE to grant them a compulsory license for the manufacture and sale of the patented product or the use of the patented process. For this purpose, the applicant shall have to prove that he has made efforts to obtain a voluntary license from the patent owner on reasonable commercial terms and conditions and that such efforts were not successful following a PERIOD of ONE HUNDRED AND FIFTY (150) days and that technical and commercial conditions are such that he is in a position to supply the domestic market on reasonable commercial conditions.

The request for the license shall be processed by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE and must contain the basic grounds supporting it and in this instance any proof deemed to be relevant shall be provided. The patent owner shall be notified of the corresponding document at the place of residence contained in the patent file and shall have a PERIOD of TEN (10) working days to respond and provide proof. The NATIONAL INDUSTRIAL PROPERTY INSTITUTE may reject any inconclusive evidence that is produced, with the owner of the patent being obliged to produce any remaining proof within a PERIOD of FORTY (40) days. Once that PERIOD has elapsed or once all proof has been provided, the NATIONAL INDUSTRIAL PROPERTY

INSTITUTE shall issue a reasoned ruling granting or refusing the compulsory license requested.

The ruling of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE granting or refusing the compulsory license may be directly appealed against before the Federal Civil and Commercial Court, within a PERIOD of TEN (10) days of notification, without prejudice to the remedies provide for under Article 72 of the Law and under the National Law on Administrative Procedures and its Regulations. The procedure concerning the legal remedy shall not have suspensive effect.

Law:

ARTICLE 43 – Once THREE (3) years have elapsed following a patent grant, or FOUR (4) following the filing of the application, if the invention has not been exploited, except in the case of *force majeure*, or if effective and serious preparations have not been made to work the patented invention or if the exploitation of the patented invention has been interrupted for more than ONE (1) year, any person may apply for authorization to use the invention without the authorization of its owner.

Objective difficulties of a technical and legal character, such as delays in obtaining registration for marketing approval from Public Bodies, which are beyond the patent owner's control and which make the exploitation of the invention impossible, shall be

considered as *force majeure* in addition to those circumstances legally recognized as such. The lack of financial resources or the lack of financial feasibility of the exploitation shall not alone constitute justificatory circumstances.

The NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall notify the patent owner of failure to comply with the provisions contained in the first paragraph prior to granting the use of the patent without his authorization.

The implementing authority shall hear the parties and, if they do not reach an agreement, it shall set a reasonable remuneration to be paid to the patent owner, that remuneration being set according to the specific circumstances of each case and taking into account the financial value of the authorization, as well as the average rate of royalties for the sector concerned with regard to commercial licensing contracts concluded between independent parties. Any decisions concerning the grant of these uses must be adopted within NINETY (90) working days of the filing of the application and may be appealed against before the Federal Civil and Commercial Court. The procedure concerning the legal remedy shall not have suspensive effect.

REGULATION:

ARTICLE 43 – Exploitation of a product shall be deemed to take place if distribution and marketing are carried out on a scale sufficient to satisfy the demands of the domestic market, under reasonable commercial conditions.

The NATIONAL INDUSTRIAL PROPERTY INSTITUTE, having heard the parties and in the absence of an agreement between them, shall set a reasonable remuneration to be paid to the patent owner, that remuneration being set according to the specific circumstances of each case, with the financial value of the authorization being taken into account, as well as the average rate of royalties for the sector concerned with regard to commercial licensing contracts concluded between independent parties.

Rulings adopted by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE within the framework of this Article may be appealed against under the terms of Article 42, final paragraph, of this Regulation.

Law:

ARTICLE 44 – The right to exploitation conferred by a patent shall be granted, without the authorization of its owner, if the competent authority has determined that the patent owner engaged in anti-competitive practices. In such cases, without prejudice to the remedies

available to the patent owner, the grant shall be carried out without the need to implement the procedure set out in Article 42.

For the purposes of the present law, the following, *inter alia*, shall be deemed to be anti-competitive practices:

(a) the fixing of excessive or discriminatory prices for patented products in relation to average market prices; in particular, where offers of market supply exist at prices significantly lower than those offered by the owner of the patent for the same product;

(b) the refusal to supply the local market under reasonable commercial conditions;

(c) the obstruction of commercial or production activities;

(d) any other act that falls into the category of behavior deemed to be punishable under Law No. 22.262 or the Law replacing or substituting that Law.

Regulation:

ARTICLE 44 – The competent authority under Law 22.262, or the law replacing or substituting that Law, shall, either ex-officio or at the request of a party, proceed to determine the existence of an alleged anti-competitive practice where activities are being carried out irregularly and in such a way that constitutes an abuse of a dominant position in the market, under the terms provided for under Article 44 of the Law and the other provisions of the Law on the Defense of Competition in force, following the summonsing of the patent owner to set out his case over a PERIOD of TWENTY (20) days. Once the case for the defense has been made and, if need be, proof has been produced, said authority shall rule on the appropriateness of the grant of compulsory licenses and shall set the conditions under which such licenses should be offered.

In this final instance, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall, once the proceedings have been received, order the publication of a notice in the Office Gazette, the Patent Gazette and in a national newspaper, stating that it will examine the offers of third parties interested in obtaining a compulsory license, granting said parties a PERIOD of THIRTY (30) days to present themselves. Once the application or applications has/have been filed, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall issue a reasoned ruling granting or refusing the compulsory license. This ruling may be appealed against through the remedies provided for in the last paragraph of Article 42.

The decisions of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE concerning the appropriateness of the grant and those relating to the grant itself or, if need be, the refusal

of the compulsory licenses, shall be adopted within a PERIOD not exceeding THIRTY (30) days.

Law:

ARTICLE 45 – THE NATIONAL EXECUTIVE may for purposes of health emergency or national security order the exploitation of certain patents through the grant of the right to exploit conferred by a patent; the scope and duration of the exploitation shall be limited to the purpose of the grant.

Regulation:

ARTICLE 45 - THE NATIONAL EXECUTIVE shall grant compulsory licenses based on the provisions of Article 45 of the Law, with the involvement of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE and, if need be, the MINISTRY OF HEALTH AND SOCIAL ACTION or the MINISTRY OF DEFENSE, within the framework of the competences bestowed upon them by the Law on Ministries.

Law:

ARTICLE 46 – The use without authorization of the patent owner to permit the exploitation of a patent –the second patent- which cannot be exploited without infringing another patent –the first patent- shall be granted provided that all the following conditions are met:

(a) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(b) the owner of the first patent shall be entitled to obtain a cross-license on reasonable terms to use the invention claimed in the second patent; and

(c) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Regulation:

ARTICLE 46 – The rulings of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, issued in exercise of the powers bestowed upon it by Article 46 of the Law, shall be liable to the remedies provided for in the final paragraph of Article 42 of this regulation.

Law:

ARTICLE 47 – Where other uses are permitted without the authorization of the patent owner, the following provisions shall be observed:

(a) authorization for said uses shall be granted by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE:

(b) authorization for said uses shall be considered according to the specific circumstances of each case;

(c) for the uses contemplated in Article 43 and/or Article 46, prior to granting the potential user must have attempted to obtain the authorization of the rightsholder under commercial terms and conditions in accordance with Article 43 and these efforts must have been unsuccessful following the PERIOD provided for under Article 42. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the patent owner shall be informed promptly;

(d) the authorization shall extend to those patents relating to the manufacturing components and processes that permit the exploitation of the patent in question;

(e) such use shall be non-exclusive;

(f) such use shall be non-assignable, except with that part of the enterprise or goodwill that integrates it;

(g) authorization shall be granted predominantly for the supply of the domestic market, except in the cases provided for in Articles 44 and 45;

(h) the rightholder shall be paid reasonable remuneration in the circumstances of each case, taking into account the economic value of the authorization, following the procedure contained in Article 43; when determining the amount of the remunerations in cases in which the uses were authorized in order to remedy anti-competitive practices the need to correct said practices must be taken into account and termination of authorization may be refused if it is felt that it is probable that the conditions which led to a license being granted are likely to recur;

(i) For the uses set out in Article 45 and for any other use not contemplated, their scope and duration shall be limited to the purposes for which they were authorized and they may be withdrawn if the circumstances which gave rise to them cease to exist and are unlikely to recur, the NATIONAL INDUSTRIAL PROPERTY INSTITUTE being authorized to review, upon motivated request, the continued existence of these circumstances. When the abovementioned uses are no longer valid, the legitimate interests of the persons who received said authorization must be taken into account. Semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

Regulation:

ARTICLE 47 – The grant of compulsory licenses shall be considered on a case-by-case basis and wherever one of the grounds set out by the Law stating that licenses shall be granted exists. Compulsory licenses shall cover patents relating to manufacturing components and processes that permit their exploitation wherever one of the grounds set out by the Law exists and compulsory licenses shall be granted under the conditions provided for in Article 47 of the Law.

Law:

ARTICLE 48 – In all cases the decisions relating to uses not authorized by the patent owner shall be subject to judicial review, along with the issues linked to the remuneration corresponding to the patent owner where appropriate.

ARTICLE 49 – The remedies brought concerning administrative acts relating to the grant of the uses provided for in the present chapter shall not have suspensive effect.

ARTICLE 50 – Whoever applies for one of the uses contained in this Chapter must have the economic capacity to use the patented invention efficiently and have access to premises approved by the competent authority for that purpose.

Regulation:

ARTICLE 50 – THE NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall establish the procedure for and method of accreditation of economic and technical capacity, according to the regulations in force issued by the competent authorities, for the efficient exploitation of the patented invention, understood in terms of supply of the domestic market under reasonable commercial conditions.

SECTION X – EXCEPTIONS AND LIMITATIONS RELATED TO FARMERS' AND/OR BREEDERS' USE OF PATENTED INVENTIONS

Our country acceded to the 1978 UPOV Act through Law 24.376, which does not permit cumulative protection. As a consequence, the Republic of Argentina protects plant varieties through Law No. 20.247 on Seeds and Phytogenetic Creations.

SECTION XI – OTHER EXCEPTIONS AND LIMITATIONS

Law:

ARTICLE 41 - THE NATIONAL INDUSTRIAL PROPERTY INSTITUTE, following a reasoned request from a competent authority, may establish exceptions limited to the rights conferred by a patent. The exceptions must not unreasonably conflict with the normal exploitation of the patent or unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of third parties.

Regulation:

ARTICLE 41 – The Ministry of Economy and Public Works and Services, together with the Ministry of Health and Social Action or the Ministry of Defense, to the extent that they are competent, shall be the competent authorities concerning requests for the establishment of exceptions limited to the rights conferred by a patent, under the terms and with the limits provided for in Article 41 of the Law.

(C) CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS.

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With regard to the issue in question, we wish to inform the Secretariat of the Committee of the regulations linked to industrial property rights relating to the issue in question.

First of all, it should be pointed out that the relevant part of Law No. 24.481 on Patents and Utility Models and subsequent amendments, text consolidated and amended by Decree 260/96, establishes the following:

ARTICLE 75 – Defrauding the rights of the inventor shall be deemed to be an offence of counterfeiting punishable by SIX (6) months to THREE (3) years imprisonment and a fine.

ARTICLE 77 – The same sentence shall be increased by a third in the case of anyone who:

(a) was a partner, representative, **advisor**, employee or worker of the inventor or of his assignees and who misappropriates or **discloses the as-yet unprotected invention**;

(b) obtains the disclosure of the invention through the corruption of a partner, representative, advisor, employee or worker of the inventor or of his assignees;

(c) violates the obligation of secrecy imposed by this law.-

Likewise, we wish to point out that the issue in question is also addressed by Ruling No. 101/96, issued by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE (INPI) of ARGENTINA, approving the Regulations governing the Exercise of the Occupation of Industrial Property Agent. This Ruling is only applicable to industrial property agents and we refer specifically here to Article 5(B) of the ANNEX of said Ruling:

The Ruling states the following:

Buenos Aires, April 18, 2006

HAVING REGARD TO Decrees Nos. 4066 of May 31, 1932; 5296 of May 30, 1938; 3775 of February 6, 1964 and 1141 of November 26, 2003 of the NATIONAL EXECUTIVE; the un-numbered Rulings of the MINISTRY OF AGRICULTURE of August 29, 1932; November 22, 1932 and September 26, 1937; Department of Industry and Mining Rulings Nos. 264 of December 26, 1961 and 573 of September 11, 1963; Department of Industrial Development Ruling No. 1 of January 2, 1976 and INPI Ruling No. P-229 of November 6, 2003, and

WHEREAS:

The occupation of industrial property agent is an activity that has always been directly linked to the services provided, by legal imperative, by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE (INPI).

Article No. 33 of Decree No. 1141 of November 26, 2003, of the NATIONAL EXECUTIVE, amending Decree No. 558/81, regulating Law No. 22.362 on Trademarks, authorizes the NATIONAL INDUSTRIAL PROPERTY INSTITUTE to regulate the professional responsibilities, rights and obligations, exams and conditions of registration of the industrial property agents whose licensing it oversees.

The diverse range and age of the regulations governing the activity of industrial property agents requires that they be gathered together and organized within one body of law and up-dated, with the necessary amendments being introduced.

That, as a result of the above, the Office of the President of the Institute ordered the preparation of draft regulations on the exercise of the occupation of industrial property agent, a task that was carried out by various sections of the Organization, in the same legislative spirit in which the regulations governing the professional activity of other similar organizations were approved.

When regulating this activity, the aim has been to ensure that the profession is accorded the highest possible status according to the level of training required to practice as an industrial property agent, this level being reflected in the fact that all candidates must, without any exception whatsoever, pass an exam in order to be licensed.

The same aim was taken into account when setting out the faculties of the body concerning the implementation of disciplinary sanctions, in the understanding that to remain a mere observer in the face of certain types of unethical behavior was prejudicial to the image of industrial property agents, a group of professionals long linked with excellence and specialization, thus filling a legal loophole in the relevant legislation in force.

In turn, the system of sanctions is designed to guarantee fully and absolutely the right of defense of agents, permitting those associations which bring them together to participate and ensuring the impartiality of the judgment, through the establishment of the Disciplinary Committee.

The interest of the administered party and the protection with which the Administration is duty-bound to provide that party in order successfully to safeguard that party's industrial property rights made up the main aim with regard to the incorporation of the obligation of assistance concerning certain issues of a highly-technical nature, limited to the processing of trademark applications and administrative appeals, a mechanism providing free assistance safeguarding the right of administered parties to petition the authorities having been established.

The said draft was subjected to an in-depth examination and exhaustive debate concerning each and every one of the articles it contains, with the participation of all of the members of the Honorary Advisory Board of this Institute, which approved the draft at the meeting of the Body of November 29, 2005.

In order to make possible the procedures necessary for the implementation of the new regime, a period of thirty days was established for its entry into force, as of the publication of the present document in the Official Gazette.

The Directorate for Legal Affairs having carried out its duty.

The present document was issued in the framework of the powers conferred by the legal regulations in force.

Thus,

THE PRESIDENT OF THE NATIONAL INDUSTRIAL PROPERTY INSTITUTE

DECIDES:

Article 1 — the Regulations on the Exercise of the Occupation of Industrial Property Agent, which, in Annex, forms an integral part of the present Resolution, are hereby approved.

Article 2 — The Regulations approved by the preceding Article shall enter into force thirty days after its publication in the Official Gazette.

Article 3 — that the Regulations should be recorded, communicated and published in the Patent and Trademark Gazette and on the web site and given to the National Directorate of the Official Registry for publication for one day and filed in the archives. — Mario R. Aramburu.

In the Annex of said Ruling which contains the Regulations on the Exercise of the Occupation of Industrial Property Agent, Article 5 establishes that:

ARTICLE 5: Duties: Industrial property agents must, at all times, carry out their duties in a professional manner, in keeping with the importance of the tasks entrusted to them, being obliged in particular to:

(a) provide suitable advice to those persons who hire their services;

(b) maintain secrecy with regard to any confidential information received in the course of their professional duties with regard to the matter entrusted to them;

(c) observe due diligence concerning the completion of the processes for which they are responsible;

(d) adopt the measures necessary to avoid prejudice to their clients in the face of any impediments which might arise to the completion of their mandate or in case of termination. In such cases, agents must inform the client through a reliable medium within a period of no less than ten days prior to the effective end of their involvement in the case.

(e) at all times behave correctly towards their other colleagues, staff of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE and the general public, both

within the scope of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, and in the exercise of the professional duties taken on, as well as when offering services and in their dealings following the end of their involvement.

Finally, any behavior not contemplated in the specific relevant legislation shall be governed by the Basic Codes of the Republic of Argentina, that is to say the Civil Code, the Commercial Code and the Criminal Code.

(D) Technology Transfer.-

We do not have anything to report with regard to this point.-

Having complied with the requests made, we transmit the present document to the Directorate for Multilateral Economic and G20 Affairs of the MINISTRY OF FOREIGN AFFAIRS AND RELIGION, in order that it may be sent to the International Bureau of WIPO to be integrated into the Electronic Forum of the Standing Committee on the Law of Patents (SCP).-

Thank you.

NATIONAL PATENT AUTHORITY (ANP).-

ANP Note 32/13

Instituto Nacional de la Propiedad Industrial

Dr. EDUARDO ARIAS

Commissioner

National Patent Authority

National Industrial Property Institute