

**AFRICAN INTELLECTUAL PROPERTY ORGANIZATION
(OAPI)**

**BANGUI AGREEMENT INSTITUTING AN AFRICAN
INTELLECTUAL PROPERTY ORGANIZATION
ACT OF DECEMBER 14, 2015**

Signed at BAMAKO

Preamble

The Government of the Republic of Benin;
The Government of Burkina Faso;
The Government of the Republic of Cameroon;
The Government of the Central African Republic;
The Government of the Republic of Chad;
The Government of the Republic of the Congo;
The Government of the Republic of Côte d'Ivoire;
The Government of the Gabonese Republic;
The Government of the Republic of Guinea;
The Government of the Republic of Guinea-Bissau;
The Government of the Republic of Equatorial Guinea
The Government of the Republic of Mali;
The Government of the Islamic Republic of Mauritania;
The Government of the Republic of the Niger;
The Government of the Republic of Senegal;
The Government of the Togolese Republic;
The Government of the Union of the Comoros;
And any other state that may subsequently accede to this Agreement;

- (1)** Moved by the desire to promote the effective contribution of intellectual property to the development of their States by promoting technological innovation, technology transfer and dissemination and by promoting creativity, to the mutual advantage of those persons who generate and utilize them;
- (2)** Desirous of affording the most effective and uniform protection of intellectual property rights on their territories as possible;
- (3)** Desirous of promoting training and the dissemination of knowledge of intellectual property;

Therefore undertake to accede to the following:

- (i)** the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967 and amended on September 28, 1979;

- (ii)** the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as last revised at Paris on July 24, 1971, and/or the Universal Copyright Convention as revised at Paris on July 24, 1971 and amended on September 28, 1979;
- (iii)** the Hague Agreement Concerning the International Registration of Industrial Designs of November 6, 1925, as revised at The Hague on November 28, 1960, and at Stockholm on July 14, 1967, at Geneva on September 28, 1979 and July 2, 1999;
- (iv)** the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967, at Geneva on September 28, 1979 and May 20, 2015;
- (v)** the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967 and amended on September 28, 1979;
- (vi)** the Patent Cooperation Treaty, done at Washington on June 19, 1970, and amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001;
- (vii)** the Patent Law Treaty adopted at Geneva on June 1, 2000;
- (viii)** the Nairobi Treaty on the Protection of the Olympic Symbol of September 26, 1981;
- (ix)** the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977 as amended on September 26, 1980;
- (x)** the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991;
- (xi)** the Marrakesh Agreement Establishing the World Trade Organization, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, of April 15, 1994;
- (xii)** the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks done at Vienna on June 12, 1973 and amended on October 1, 1985;
- (xiii)** the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961;
- (xiv)** the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, done at Brussels on May 21, 1974;
- (xv)** the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on June 27, 1989, amended on October 3, 2006 and on November 12, 2007;

- (xvi)** the Singapore Treaty on the Law of Trademarks of March 27, 2006;
- (xvii)** the World Intellectual Property Organization Copyright Treaty adopted in Geneva on December 20, 1996;
- (xviii)** the World Intellectual Property Organization Performances and Phonograms Treaty, adopted in Geneva on December 20, 1996;
- (xix)** the Beijing Treaty on Audiovisual Performances, adopted on June 24, 2012;
- (xx)** the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled of June 28, 2013;
- (xxi)** the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised at Stockholm on July 14, 1967 and at Geneva on May 13, 1977, and amended on September 28, 1979;
- (xxii)** the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, as amended on September 28, 1979; and
- (xxiii)** the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended on September 28, 1979.

Noting Article 4(iv) of the above-mentioned Convention Establishing the World Intellectual Property Organization, which provides that the Organization “[...] shall encourage the conclusion of international agreements designed to promote the protection of intellectual property”;

Noting Article 19 of the Paris Convention for the Protection of Industrial Property, which provides that “[...] the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention”, and Article 4A(2) of the Convention, which provides that “[a]ny filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority”;

Noting Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, which provides that “[t]he Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention”;

Noting Article 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961, which provides that “[c]ontracting States reserve the right to enter into special agreements among themselves in so far as such

agreements grant to performers, producers of phonograms or broadcasting organizations more extensive rights than those granted by this Convention or contain other provisions not contrary to this Convention”;

Noting Article XIX of the Universal Copyright Convention, as revised at Paris on July 24, 1971, which provides that “[t]his Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States”;

Noting Article 14(2)(a) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which provides that “[a]ny country outside the Special Union, which is party to the Paris Convention for the Protection of Industrial Property, may accede to this Act and thereby become a member of the Special Union”;

Noting Article 3(1) of the Patent Cooperation Treaty, which provides that “[a]pplications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty”, and Article 45(1), which provides that “[a]ny treaty providing for the grant of regional patents (‘regional patent treaty’), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents”;

Noting Article 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “[m]embers may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement”;

Noting Article 69 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “[m]embers agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights”;

Noting Article 1 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, which provides that “[t]he States party to this Treaty (hereinafter called ‘the Contracting States’) constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure”;

Noting the Protocol of December 6, 2005 amending the Agreement on Trade-Related Aspects of Intellectual Property Rights, which provides that “[t]he obligations of an exporting Member under Article 31(f) shall not apply with respect to the grant by it of a compulsory license to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out in paragraph 2 of the Annex to this Agreement”;

Noting the Doha Declaration of November 14, 2001 which states that the Agreement on Trade-Related Aspects of Intellectual Property Rights “does not and should not prevent members from taking measures to protect public health”;

Noting Article 47 of the Agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization, Act of February 24, 1999, which provides that “[t]his Agreement may be revised from time to time, notably with a view to introducing amendments intended to improve the services rendered by the Organization”;

Noting the Vienna Convention of May 23, 1969 on the Law of Treaties;

Considering the importance of establishing firstly a uniform system for the protection of literary and artistic property and industrial property and, having particular regard to industrial property, a system for the single deposit of applications for patents, the registration of utility models, trademarks, service marks, industrial designs, trade names, geographical indications, integrated circuits, plant varieties and microorganisms, and secondly a common system of protection against unfair competition, in order to facilitate recognition of the rights provided for in the legislation of their countries;

Considering the role played by intellectual property in achieving the aims of economic and social development;

Considering the importance of creating a body responsible for applying common administrative procedures deriving from a uniform system for the protection of intellectual property and to promote training and the dissemination of knowledge in intellectual property;

Considering the need for the Organization to adapt to the digital environment;

Have resolved to revise the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization, Act of February 24, 1999 and, for that purpose, have designated plenipotentiaries, who have agreed on the following provisions.

PART I – GENERAL PROVISIONS

SECTION I – DEFINITIONS

**Article 1
Definitions**

Within the meaning of this Agreement,

“Bangui Agreement” means the Agreement Relating to the Creation of an African Intellectual Property Organization, done at Bangui, together with all its annexes;

“Organization” means the African Intellectual Property Organization;

“High Commission of Appeal” means the High Commission of Appeal of the Organization;

“Chairman” means the Chairman of the Administrative Council of the Organization;

“Director-General” means the Director-General of the Organization;

“Member States” means the States members of the Organization;

“Third-party State” means a State not party to the Treaty;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, concluded at Paris on March 20, 1883, as subsequently amended;

“Patent Cooperation Treaty” means the Treaty done at Washington on June 19, 1970, as subsequently amended;

“Ministry” means the Ministry of each Member State that is responsible for industrial property matters;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works, concluded at Berne on September 9, 1886, as subsequently amended;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

SECTION II – FUNDAMENTAL PRINCIPLES

Article 2

Duties and responsibilities

(1) The African Intellectual Property Organization shall be responsible for the following:

- (a)** implementing and applying the common administrative procedures deriving from a uniform system for the protection of industrial property and the provisions of relevant international agreements to which the Member States of the Organization have acceded, and providing services related to industrial property;
- (b)** contributing to the promotion of protection for literary and artistic property as an expression of cultural and social values;
- (c)** stimulating the creation of collective management organizations in Member States where such organizations do not exist;
- (d)** centralizing, coordinating and disseminating information of all kinds relating to the protection of literary and artistic property and communicating such information to any State party to this Agreement that requests it;
- (e)** promoting the economic development of Member States, in particular through effective protection of intellectual property and related rights;
- (f)** providing training on intellectual property;
- (g)** performing any other duties connected with its aims that might be entrusted to it by Member States;
- (h)** promoting technological innovation and creativity;
- (i)** promoting the protection of geographical indications;
- (j)** promoting the protection of traditional cultural expressions; and
- (k)** promoting the protection of traditional knowledge.

(2) The Organization shall also perform any duties concerning the implementation of laws relating to intellectual property and the implementation of international treaties on a unanimous decision of its Administrative Council, in accordance with Article 7 below.

Article 3

OAPI as an industrial property office

- (1)**For each Member State, the Organization shall serve both as the national industrial property service and as the central office for patent documentation and information, within the meaning of Article 12 of the Paris Convention.
- (2)**For each Member State also party to the Patent Cooperation Treaty, the Organization shall serve as "national office", "designated office", "elected office" or "receiving office" within the meaning of the relevant articles of that Treaty.
- (3)**For each Member State, the Organization shall serve as "office of origin" and "designated office", within the meaning of the relevant articles of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Article 4

Dispute resolution

- (1)**Unless otherwise specifically provided for in an agreement signed by the Member States, disputes relating to the recognition, scope or exploitation of the rights provided for in this Agreement and its annexes shall fall within the jurisdiction of courts in Member States. These courts shall have exclusive jurisdiction over related criminal matters.
- (2)**Any dispute concerning the application of this Agreement and its annexes may be settled by arbitration or mediation.

Article 5

Scope of the Agreement

- (1)**Rights relating to the fields of intellectual property, as provided for in the annexes to this Agreement, shall be independent national rights subject to the legislation of each Member State in which they have effect.
- (2)**This Agreement and its annexes shall serve as laws governing their intended subject matter in the Member States, where they shall rescind or prevent the entry into force of all contrary provisions. Annex VII relating to literary and artistic property is a minimum statutory framework.
- (3)**Non-nationals shall enjoy the provisions of this Agreement and its annexes under the same conditions as nationals.
- (4)**The provisions of paragraph (3) above shall apply to non-nationals of a State party to an international agreement to which the Organization or its Member States are parties or non-nationals who do not have their principal establishment or residence in such a State under conditions of reciprocity.

Article 6
Annexes

(1) The annexes to this Agreement contain, respectively, the provisions to be applied in each Member State concerning the following:

- patents (Annex I);
- utility models (Annex II);
- trademarks and service marks (Annex III);
- industrial designs (Annex IV);
- trade names (Annex V);
- geographical indications (Annex VI);
- literary and artistic property (Annex VII);
- protection against unfair competition (Annex VIII);
- layout designs (topographies) of integrated circuits (Annex IX); and
- plant variety protection (Annex X).

(2) The Agreement shall be applicable in its entirety to every State that ratifies or accedes to the Agreement.

(3) Without prejudice to the provisions of Article 5 above, Annexes I to X inclusive shall form an integral part of this Agreement.

Article 7

Implementation of international treaties

By decision of the Administrative Council referred to in Article 26 *et seq.* of this Agreement, the Organization may take any measures for the application of the administrative procedures necessary for the implementation of the international treaties concerning intellectual property to which the Member States have acceded.

SECTION III – RULES AND PROCEDURES

Article 8

Filing of applications

(1) Applications for patents, for the registration of utility models, trademarks or service marks, industrial designs, trade names, geographical indications or layout designs (topographies) of integrated circuits and applications for plant variety certificates shall be filed directly with the Organization.

(2) Notwithstanding the provisions of paragraph (1) above, an application may be filed with the competent Ministry of a Member State where the applicant is domiciled on its

territory; in such case, the Ministry shall transmit the application to the Organization within five working days of receiving it.

- (3)** A report, of which a copy shall be provided to the applicant, shall be prepared by the Organization or by the Ministry, as the case may be, taking formal note of each filing and stating the date and time of the submission of the documents.
- (4)** Applicants resident outside the territory of the Member States shall file through an agent selected in one of those Member States. The professional status of agent accredited to the Organization shall be governed by special regulations adopted by the Administrative Council.
- (5)** Applications filed with the Organization or the Ministry may be conveyed by postal, electronic or any other legal means of communication.

(6)

(a) The Organization shall act as receiving office within the meaning of the Patent Cooperation Treaty with respect to international applications filed by residents and nationals of Member States, save where an agreement within the meaning of sub-paragraph (b) below has been concluded.

(b) Under the relevant provision of the Regulations under the Patent Cooperation Treaty, the Organization may agree with another Contracting State of the Patent Cooperation Treaty or with any other intergovernmental organization that the national office of the latter State or the intergovernmental organization shall act instead of the Organization as receiving office for applicants who are residents or nationals of a Member State.

Article 9

Filing and registration of national and international applications

- (1)** Subject to the provisions of paragraphs (2) to (4) below, any filing with the Ministry of one of the Member States in accordance with the provisions of this Agreement and its annexes, or with the Organization, shall be equivalent to a national filing in each Member State.
- (2)** Any filing of an international patent application that includes the designation of at least one Member State shall be equivalent to a national filing in each Member State that is also party to the Patent Cooperation Treaty.
- (3)** Any international registration of a mark effected in accordance with the provisions of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and including the designation of at least one Member State shall have the effect of a national deposit in each Member State that is also party to the said Agreement.
- (4)** Any international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs shall have

the effect of a national deposit in each Member State that is also party to that Agreement.

Article 10

Grant, publication and maintenance of patents, registration of utility models, and their effects

- (1)** The Organization shall examine applications for patents and utility models according to the common procedure provided for in this Agreement and its Annexes I and II.
- (2)** It shall grant patents and register utility models and ensure their publication.
- (3)** The procedure before the Organization with regard to international applications filed in accordance with the rules of the Patent Cooperation Treaty shall be subject to the provisions of that Treaty, complemented by those of this Agreement and its Annex I.
- (4)** In each Member State, utility models and, subject to the provisions of paragraph (5) below, patents, shall produce the effects provided for in this Agreement and its Annex II.
- (5)** Patents granted in response to international applications filed in accordance with the provisions of the Patent Cooperation Treaty shall produce their effects in those Member States that are also party to that Treaty.
- (6)** By unanimous decision by the Administrative Council, the Organization may enter into validation agreements with partner offices, in particular on the recognition of deposits, results of examinations and titles granted. The conditions for their implementation shall be fixed by an implementing regulation.

Article 11

Registration, validity and publication of trademarks and service marks, and their effects

- (1)** The Organization shall examine, register and publish trademarks and service marks according to the common procedure provided for in this Agreement and its Annex III.
- (2)** Subject to the provisions of paragraph (3) below, registered and published marks shall produce their effects in each Member State in accordance with the provisions of this Agreement and its Annex III.
- (3)** The international registration of a mark effected under the provisions of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and having effect in at least one Member State shall produce the same effects in each of the States party to this Agreement and to the Madrid Protocol as if the trademark had been registered with the Organization.

Article 12

Registration, Maintenance and Publication of Industrial Designs, and their Effects

- (1)** The Organization shall examine, register, maintain and publish industrial designs according to the common procedure provided for in this Agreement and its Annex IV.
- (2)** Subject to the provisions of paragraph (3) below, registered and published industrial designs shall produce their effects in each Member State in accordance with the provisions of this Agreement and its Annex IV.
- (3)** The international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs and having effect in at least one Member State shall produce the same effects in each of the States party to this Agreement and to the Hague Agreement as if the industrial design had been deposited with the Organization.

Article 13

Registration, maintenance and publication of trade names, and their effects

- (1)** The Organization shall examine, register, maintain and publish trade names according to the common procedure provided for in this Agreement and its Annex V.
- (2)** Registered and published trade names shall produce their effects in each Member State in accordance with this Agreement and its Annex V.

Article 14

Registration and publication of geographical indications and their effects

- (1)** The Organization shall examine, register and publish geographical indications according to the common procedure provided for in this Agreement and its Annex VI.
- (2)** Subject to the provisions of paragraph (3) below, registered and published geographical indications shall produce their effects in each Member State in accordance with the provisions of this Agreement and its Annex VI.
- (3)** The international registration of a geographical indication effected under the provisions of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and having effect in at least one Member State shall produce the same effects in each State party to this Agreement and to the Lisbon Agreement as if the geographical indication had been registered with the Organization.

Article 15

Registration, maintenance and publication of layout designs (topographies) of integrated circuits, and their effects

- (1)** The Organization shall examine, register, maintain and publish layout designs (topographies) of integrated circuits according to the common procedure provided for in this Agreement and its Annex IX.
- (2)** Registered and published layout designs (topographies) of integrated circuits shall produce their effects in each Member State in accordance with the provisions of this Agreement and its Annex IX.

Article 16

Issuance, maintenance and publication of plant variety certificates

- (1)** The Organization shall examine applications for plant variety certificates, issue, maintain and publish such certificates according to the common procedure provided for in this Agreement and its Annex X.
- (2)** Registered and published new plant varieties shall produce their effects in each Member State in accordance with the provisions of this Agreement and its Annex X.

Article 17

Publications of the Organization

- (1)** The Organization shall publish the following under the conditions set forth in the implementing regulations:
 - (a)** titles of any kind;
 - (b)** all titles issued;
 - (c)** any subsequent procedural documents; and
 - (d)** any document amending or assigning the rights in the titles.
- (2)** The titles issued by the Organization shall be published in the Official Bulletin of Industrial Property.
- (3)** All publications of the Organization shall be transmitted to the Ministry of each Member State responsible for industrial property, literary and artistic property or plant varieties, as the case may be.

Article 18

Special registers

- (1)** For all Member States, the Organization shall maintain a special register of patents, a special register of utility models, a special register of trademarks and service marks, a special register of industrial designs, a special register of trade names, a special register of geographical indications, a special register of plant variety certificates and a special register of layout designs (topographies) of integrated circuits, in which the registrations specified by this Agreement shall be entered.

- (2) Any person may consult the registers and obtain extracts on the terms specified in the implementing regulations.

Article 19

Diverging provisions

Where the provisions of this Agreement or its annexes diverge from those of the international agreements to which the Member States or the Organization are party, the international agreements shall prevail.

Article 20

Scope of judicial decisions

- (1) Subject to the provisions of Article 4 above, final judicial decisions rendered in respect of the validity of titles in a Member State pursuant to the provisions of Annex I to Annex X of this Agreement shall be binding on all other Member States, save for decisions based on public policy and morality.
- (2) Final judicial decisions rendered in a Member State in areas other than the validity of titles shall be enforceable in all other Member States pursuant to an exequatur decision rendered in accordance with the legislation of the State concerned, save for decisions based on public policy and morality.

PART II – MEMBER STATES

SECTION I – MEMBERSHIP

Article 21

Membership

African States parties to the Bangui Agreement, Act of February 24, 1999 shall be members of the Organization.

Article 22

Accession

- (1) Any African State that is not party to the Bangui Agreement but is party to the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and/or the Universal Copyright Convention and the Patent Cooperation Treaty may accede to this Agreement.
- (2) To that end, an application for accession shall be submitted to the Administrative Council, which shall rule by a majority vote of its members. Notwithstanding Article 32 of this Agreement, equally divided votes shall constitute rejection.
- (3) Instruments of ratification of or accession to this Agreement shall be deposited with the Director-General of the Organization.
- (4) Accession shall take effect two months after the deposit referred to in paragraph (3) above, save where a later date is specified in the instrument of accession.

**SECTION II – RIGHTS AND OBLIGATIONS
OF MEMBER STATES**

Article 23

Rights of Member States

In addition to performing the duties and responsibilities provided for in Article 2 above, the Organization shall offer Member States all the required services connected with its aims, in accordance with the guidance of the Administrative Council.

Article 24

Obligations

- (1) An initial financial contribution shall be required of any State that becomes a member of the Organization.

The amount and terms of payment of such initial contribution shall be determined by the Administrative Council of the Organization.

Nevertheless, States recognized as *ex-officio* members of the Organization under Article 21 above shall be exempted from such initial contribution.

(2) Member States shall make an exceptional contribution to the Organization where required to balance the budget.

Such contribution shall be entered in the budget of the Organization and distributed equally among the Member States.

PART III – ORGANS OF THE ORGANIZATION

Article 25

Organs of the Organization

Under this Agreement, the Organization shall have the following organs at its disposal to perform its duties and responsibilities:

- (a)** the Administrative Council;
- (b)** the High Commission of Appeal; and
- (c)** the Office of the Director-General.

SECTION I – ADMINISTRATIVE COUNCIL

Article 26

Composition of the Administrative Council

- (1)** The Administrative Council of the Organization shall be composed of representatives of the Member States on the basis of one representative per State.
- (2)** Where necessary, a Member State may entrust its representation on the Council to the representative of another Member State. No member of the Council may represent more than two States.

Article 27

Functions and powers of the Administrative Council

The Administrative Council is the highest authority of the Organization. In addition to performing the functions conferred on it by other provisions of this Agreement, it shall determine the overall policy of the Organization and regulate and oversee its activities. It shall, in particular:

- (a)** draft the regulations necessary for the implementation of this Agreement and its Annexes;
- (b)** draft the financial rules and regulations, the regulations relating to fees, the regulations relating to the High Commission of Appeal, the general staff rules and regulations and the regulations governing agents;
- (c)** oversee the application of the regulations referred to in paragraphs (a) and (b) above;

- (d) approve the program and annually vote the budget and, as the case may be, any amended or additional budgets, and oversee their implementation;
- (e) audit and approve the Organization's annual accounts and inventory;
- (f) approve the annual report on the activities of the Organization;
- (g) appoint the most senior executives and designate the auditor of the Organization;
- (h) rule on applications for admission as members or as associated States of the Organization;
- (i) fix the amount of any contribution by Member States;
- (j) decide, where necessary, on the creation of *ad hoc* committees on specific issues; and
- (k) determine the working language or languages of the Organization.

Article 28

Special powers of the Administrative Council

In addition to the functions provided for in Article 27 of this Agreement, the Administrative Council shall, where appropriate, draft the regulations necessary for the implementation of the treaties or international agreements to which Member States are party, with a view to their implementation in their respective national territories.

Article 29

Sessions of the Administrative Council

- (1) The Administrative Council shall meet once a year in ordinary session.
- (2) Extraordinary sessions may be convened where necessary by the Chairperson at the request of one third of the membership or at the request of the Director-General.

Article 30

Decisions of the Administrative Council

- (1) Decisions of the Administrative Council shall be taken as resolutions.
- (2) For any decision of the Administrative Council, the representative of each Member State shall have one vote.
- (3) Subject to the provisions of Article 2(2) and Article 10(6) above, decisions of the Administrative Council shall be taken by a simple majority of members present or represented.

(4) Subject to the provisions of paragraph (3) above, in the event of equally divided votes, the Chairperson shall have a casting vote.

SECTION II – HIGH COMMISSION OF APPEAL

Article 31

Name, functions and composition

(1) The High Commission of Appeal shall be composed of three members selected by the drawing of lots from a list of representatives designated by the Member States, with one representative designated per State.

(2) It shall rule on appeals in the following cases:

(a) rejection of applications for titles of protection for industrial property;

(b) rejection of requests for the maintenance or extension of terms of protection;

(c) rejection of requests for restoration; and

(d) decisions on oppositions.

(3) The sessions of the High Commission of Appeal and the appellate proceedings before it shall be governed by rules adopted by the Administrative Council.

SECTION III – OFFICE OF THE DIRECTOR-GENERAL

Article 32

Powers of the Office of the Director-General

Under the authority of a Director-General, the Office of the Director-General shall be responsible for the executive tasks of the Organization and shall ensure its day-to-day management and continuity. It shall implement the instructions of the Administrative Council and perform the tasks arising from the provisions of this Agreement and its annexes, and shall report to the Administrative Council.

Article 33

Director-General

(1) The Director-General shall be appointed for a five-year term renewable once, as with the other most senior executives.

(2) The Director-General shall be the most senior official of the Organization.

(a) He shall represent the Organization in all areas of civic life.

(b) He shall be answerable for the management of the Organization to the Administrative Council, to which he shall report and with whose instructions

he shall comply in matters concerning the internal and external affairs of the Organization.

- (3) The Director-General shall draft the budget, program and financial report, together with regular activity reports, which he shall transmit to Member States.
- (4) The Director-General shall take part, without the right to vote, in all sessions of the Administrative Council. He shall be *ex-officio* secretary of those sessions.
- (5) The Director-General shall recruit, appoint, and dismiss or otherwise terminate the appointments of the staff of the Organization, with the exception of the most senior executives, in accordance with conditions laid down in the general staff regulations.
- (6) The Director-General shall decide whether to issue and maintain the validity of titles; he shall impose the penalties provided for in the Agreement and its annexes where he is so empowered.

Article 34
Arbitration and Mediation Center

- (1) An Arbitration and Mediation Center is hereby established within the Organization. It shall be attached to the Office of the Director-General and shall be responsible for promoting the extra-judicial resolution of intellectual property disputes.
- (2) The organization and functioning of the Arbitration and Mediation Center and the provisions governing arbitration and mediation shall be fixed by regulations adopted by the Administrative Council.

PART IV – FINANCIAL RESOURCES OF THE ORGANIZATION

Article 35
Resources

- (1) The resources of the Organization shall consist of the following:
 - (a) the proceeds from the fees provided for in the regulations of the Organization and in the laws of Member States;
 - (b) the proceeds from remuneration for services rendered;
 - (c) any other proceeds, in particular revenue from property owned by the Organization; and
 - (d) donations and bequests approved by the Administrative Council.

- (2) The Administrative Council shall lay down the fees and the income necessary for the running of the Organization and shall fix their amounts and terms of payment.
- (3) Where required to balance the budget, Member States shall make an exceptional contribution to the Organization. Such contribution shall be included in the budget of the Organization and shared equally among the Member States.

Article 36

Budgetary Surpluses

- (1) Budgetary surpluses shall be allocated to the funding of intellectual property development projects and programs adopted by the Administrative Council.
- (2) Budgetary surpluses shall be calculated after provision has been made for reserve funds and special funds established by the financial regulations.

PART V – MISCELLANEOUS AND FINAL PROVISIONS

Article 37

Legal personality

The Organization shall have legal personality. In each Member State, it shall enjoy the broadest legal capacity accorded to legal persons by national legislation.

Article 38

Privileges and immunities

- (1) The immunities and privileges generally accorded to international organizations shall be accorded to the Organization on the territories of Member States in order to facilitate the performance of its duties and responsibilities.
- (2) In particular, Member States shall grant the Organization the benefit of the following privileges and immunities.
 - (a) Its officials, wherever they may be, shall enjoy immunity from prosecution except in so far as the Organization expressly waives it, either in specific proceedings or by contract. Officials of the Organization means permanent staff members, experts for the duration of their assignments and representatives of Member States and their substitutes for the duration of Administrative Council sessions.
 - (b) The property and assets of the Organization shall be exempt from search, requisitioning, confiscation, expropriation, sequestration or any other form of seizure ordered by the executive, legislative or judicial authorities of Member States.
 - (c) The Organization may hold funds in local currency and open bank accounts in any currency, transfer its funds or currency and convert all currencies it holds into any other currency in accordance with the applicable rules.

- (d) The Organization, its assets, property and income and also its operations and transactions shall be exempt from all taxes, charges and customs duties in accordance with the headquarters agreement in the host State and the privileges accorded to international organizations in other Member States.
- (e) The premises of the Organization shall be inviolable and its property and assets unattachable.
- (f) The archives of the Organization shall be inviolable subject to the rights of investigation and communication vested in the judicial authorities.
- (g) No import or export restriction may be imposed on the Organization with respect to materials intended for the official and exclusive use of its services. Such materials may only be disposed of for local consumption in accordance with provisions in force.

Article 39

Headquarters of the Organization

- (1) The headquarters of the Organization shall be at Yaounde (Republic of Cameroon).
- (2) The Organization shall be placed under the protection of the Government of the Republic of Cameroon.

Article 40

Duration of the Organization

The Organization shall be of unlimited duration.

Article 41

Signature and ratification

Any State that is a signatory to this Act shall ratify the Act and the instruments of ratification shall be deposited with the Director-General of the Organization.

Article 42

Entry into force

- (1) This Act shall enter into force two months after the deposit of the instruments of ratification by at least two thirds of the signatory States.
- (2) The date of entry into force of the annexes to this Act of the Agreement shall be fixed and notified to States by the Director-General or by the Chairperson of the Administrative Council.

SECTION I – TRANSITIONAL PROVISIONS

Article 43

Transitional provisions

- (1) This Act shall replace the Act of February 24, 1999 of the Bangui Agreement in relations among its States parties, where applicable.

(2) Applications for titles of protection filed prior to the entry into force of this Act of the Agreement shall remain subject to the provisions applicable on their filing date. However, the exercise of the rights deriving from the titles of protection granted as a result of those applications shall be subject to the provisions of the annexes to this Agreement as from the date of entry into force of the Agreement, subject to acquired rights, which shall remain reserved.

Article 44

Titles granted in a State prior to its accession

- (1) Titles in force in a State prior to its accession to this Agreement shall continue to have effect in that State in accordance with the legislation in force when they were applied for.
- (2) Owners of those titles who wish to extend the protection afforded by the titles to the whole of the territory of the Organization prior to their expiry shall file a request for extension with the Organization according to the procedure laid down in the implementing regulations.
- (3) The implementing regulations shall govern disputes between owners of a title issued by the Organization who are also owners of a title issued by a State prior to its accession.

Article 45

Titles in force within OAPI prior to the accession of a State

Owners of titles in force within the Organization prior to the accession of a State who wish to extend protection to that State shall file an application for such extension with the Organization according to the procedure laid down in the implementing regulations.

SECTION II – TRANSITIONAL AND FINAL PROVISIONS

Article 46

Transitional provisions relating to pharmaceutical products

Until January 1, 2033 or on the date on which they cease to be classified as Least Developed Countries, Member States that have such status are no longer required to apply the provisions of Annex I regarding patents consisting in or relating to a pharmaceutical product and the provisions of Annex VIII relating to confidential information.

Article 47

Revision

- (1) This Agreement may be revised from time to time.
- (2) Revision of the Bangui Agreement shall be initiated by the Administrative Council or the Office of the Director-General.
- (3) The Administrative Council shall lay down the procedure for revision.

Article 48
Denunciation

- (1)** Any State party to this Agreement may denounce it by written notification addressed to the Director-General of the Organization.
- (2)** The denunciation shall take effect on December 31 of the second year following that in which the Director-General of the Organization received the notification.
- (3)** Industrial property titles in force in the State concerned shall be governed by national legislation after the denunciation.

Done at Bamako, on December 14, 2015, in a single copy in French, which shall be deposited with the Director-General of the Organization. The Director-General shall send a certified true copy by diplomatic channels to the government of each signatory or acceding State.

FOR THE GOVERNMENT OF THE REPUBLIC OF BENIN,
Pocoun Damè Kombienou
Minister for Industry and Trade

FOR THE GOVERNMENT OF THE REPUBLIC OF BURKINA FASO,
Hippolyte Dah
Minister for Industry, Trade and Crafts

FOR THE GOVERNMENT OF THE REPUBLIC OF CAMEROON,
Ernest Gwaboubou
Minister for Mines, Industry and Technological Development

FOR THE GOVERNMENT OF THE CENTRAL AFRICAN REPUBLIC,
Gertrude Zouta
Minister for Trade, Industry and Small and Medium Enterprises

FOR THE GOVERNMENT OF THE REPUBLIC OF CHAD,
Tahir Mournou Adam
*Secretary General at the Ministry of the Economy,
Trade and Tourism Development*

FOR THE GOVERNMENT OF THE REPUBLIC OF CONGO,
Isidore Mvouba
*Minister of State,
Minister for Industrial Development and the Promotion of the Private
Sector*

FOR THE GOVERNMENT OF THE REPUBLIC OF CÔTE D'IVOIRE,
Jean Claude K. Brou
Minister for Industry and Mines

FOR THE GOVERNMENT OF THE REPUBLIC OF EQUATORIAL GUINEA,
Professor Anacleto Olo Mibuy
*President of the Center for Scientific and Technological Research
(CICTE)*

FOR THE GOVERNMENT OF THE GABONESE REPUBLIC,
Martial-Ruffin Massavou
Minister for Mines and Industry

FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA,
Alsény Sylla
*Secretary General of the Ministry of Industry,
Small and Medium Enterprises and
Promotion of the Private Sector*

**FOR THE GOVERNMENT OF THE REPUBLIC OF GUINEA-BISSAU,
Vicente Fernandes
*Minister for Trade and Industry***

**FOR THE GOVERNMENT OF THE REPUBLIC OF MALI,
Abdel Karim Konate
*Minister for Trade and Industry***

**FOR THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF MAURITANIA,
Sidi Mohamed Ould Moustapha
*Head of the National Organization for Liaison with the OAPI***

**FOR THE GOVERNMENT OF THE REPUBLIC OF NIGER,
Omar Hamidou Tchiana
Minister of State
*Minister for Mines and Industrial Development***

**FOR THE GOVERNMENT OF THE REPUBLIC OF SENEGAL,
Aly Ngouille Ndiaye
*Minister for Industry and Mines***

**FOR THE GOVERNMENT OF THE TOGOLESE REPUBLIC,
Talime Abe
Director-General of Domestic Trade and Competition in the
Ministry of Trade, Industry,
*Promotion of the Private Sector and Tourism***

**FOR THE GOVERNMENT OF THE UNION OF THE COMOROS,
Siti Kassim
Minister for Production, the Environment,
*Energy, Industry and Crafts***

ANNEX I
PATENTS

PART I – GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex,

(1) "Invention" means an idea that permits a specific problem in the field of technology to be solved in practice.

"Patent" means the title granted for the protection of an invention.

(2) The invention may consist in, or be related to, a product, a process or the use thereof.

(3) The following shall not be considered inventions within the meaning of paragraph (1):

(a) discoveries, scientific theories and mathematical methods;

(b) schemes, principles or methods for doing business, performing purely mental activities or playing games;

(c) mere presentation of information;

(d) computer programs;

(e) purely ornamental creations; and

(f) literary, architectural and artistic works or any other esthetic creation.

(4) Paragraph (3) above only excludes the patentability of the enumerated items where the patent application contains one of these items considered as such.

Article 2 Patentable invention

(1) An invention that is new, involves an inventive step and is industrially applicable may be the subject of an invention patent (hereinafter, "patent").

(2) The following shall not be patentable:

(a) inventions whose exploitation is contrary to public policy or morality, it being understood that the working of the invention shall not be considered contrary to public policy or morality merely because it is prohibited by law or regulation;

(b) methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods; and

(c) inventions having as their subject matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals other than microbiological processes and the products of such processes.

(3) Subject to the provisions of paragraph (2) above, any substance included in the prior art shall not be excluded from patentability provided it is put to new use.

Article 3

Novelty

(1) An invention shall be new if it has not been anticipated by prior art.

(2) Prior art shall consist of everything made available to the public, anywhere and by any means or method, before the filing date either of the patent application or of a patent application filed abroad the priority of which has been validly claimed.

(3) The novelty of an invention shall not be denied if, during the 12 months preceding the date specified in paragraph (2) above, the invention has been the subject of a disclosure resulting from:

(a) an obvious violation committed against the person filing the application or its author; or

(b) the fact that the person filing the application or its author has displayed it at an official or officially recognized international exhibition;

(4) Any patent application whose filing date is earlier than a subsequent application, but whose publication was made on that date or on a later date shall be part of the prior art.

Article 4

Inventive step

An invention shall be regarded as resulting from an inventive step if, having regard to the prior art, it would not have been obvious to a person having ordinary knowledge and skill in the art on the filing date of the patent application or, if priority has been claimed, on the priority date validly claimed for the application.

Article 5

Industrial applicability

An invention shall be considered industrially applicable if its object can be made or used in any kind of industry. The term "industry" shall be understood in its broadest sense and shall in particular cover handicrafts, agriculture, fishery and services.

PART II – RIGHTS CONFERRED BY THE PATENT

Article 6

Rights conferred by the patent

(1) Subject to the conditions and within the limits set by this Annex, the patent shall confer on its owner the exclusive right to work the patented invention.

(2) Subject to the conditions and within the limits set by this Annex, the owner of the patent shall have the right to prohibit any person from working the patented invention.

(3) For the purposes of this Annex, the “working” of a patented invention means any of the following acts:

(a) where the patent has been granted for a product:

- (i)** manufacturing, importing, offering for sale, selling and using the product; and
- (ii)** holding the product for the purposes of offering it for sale, selling it or using it;

(b) where the patent has been granted for a process:

- (i)** using the process; and
- (ii)** engaging in the acts mentioned in sub-paragraph (a) above in relation to a product resulting directly from the use of the process.

(4) The owner of the patent may also:

- (a)** assign the patent or transfer it by succession;
- (b)** enter into other contracts.

(5) The scope of the protection conferred by the patent is determined by the claims. However, the description and drawings shall serve to interpret the claims.

(6) If the object of the patent is a process, the protection conferred by the patent shall encompass the products obtained by this process.

Article 7

Limitation of the rights conferred by the patent

(1) The rights conferred by the patent shall not extend to the following:

- (a)** the offer, import, holding or use of the patented product on the territory of a Member State, after the product is legally placed on the market in any country by the owner of the patent or with his express consent;
- (b)** the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a Member State;
- (c)** acts in relation to a patented invention that are carried out for experimental purposes in the course of scientific and technical research or for educational purposes;
- (d)** studies and tests required for securing an authorization to place a medicine on the market, as well as acts necessary for conducting such and securing the authorization; and

(e) acts performed by any person who in good faith on the filing date or, where priority is claimed, on the priority date of the application on the basis of which the patent is granted on the territory of a Member State, was in possession of the invention.

(2) The right of the possessor referred to in sub-paragraph 1(e) above may only be assigned with the goodwill, the establishment or the part thereof to which it is attached.

Article 8

Term of protection

The patent shall expire at the end of the twentieth calendar year following the filing date of the application, subject to the provisions of Articles 30 and 44.

Article 9

Right to the patent

(1) The right to the patent shall belong to the inventor or his successor in title; the applicant shall be deemed to be the owner of the right.

(2) If and where several persons have created the same invention independently of one another, the right to the patent shall belong to the person who filed the application whose filing date or, in the event of a priority claim, whose validly claimed priority date, is earliest, provided the application is not withdrawn, abandoned or refused.

(3) Where several persons have made an invention jointly, the right to the patent shall belong to them jointly; the title shall be issued to them as joint owners.

Article 10

Joint ownership of patents

Unless otherwise provided for, joint ownership of a patent shall be governed by the following provisions:

(a) Each of the joint owners may work the invention to his benefit, provided he makes fair compensation to the other joint owners who are not personally working the invention or who have not granted exploitation licenses. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.

(b) Each of the joint owners may institute proceedings for counterfeit to his exclusive benefit. The joint owner who institutes such proceedings shall notify the other joint owners of the action. Any ruling on the action shall be held in abeyance until proof of such notification is provided.

(c) Each of the joint owners may grant to a third party a non-exclusive exploitation license to his benefit, provided he makes fair compensation to the other joint owners who have not granted an exploitation license. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.

However, the draft license agreement shall be notified to the other joint owners, together with an offer to assign the share at a specific price.

Within three months of such notification, any of the joint owners may challenge the granting of the license, provided he acquires the share of the person who wishes to grant the license.

Failing agreement within the prescribed time limit, the price shall be fixed by the competent domestic court. The parties shall have one month with effect from the notification of the judgement either at first instance or on appeal to relinquish the grant of the license or the purchase of the jointly owned share without prejudice to any possible damages owed; costs shall be borne by the relinquishing party.

- (d)** An exclusive exploitation license may only be granted with the agreement of all the joint owners or by the leave of the competent domestic court.
- (e)** Each joint owner may, at any time, assign his share. Joint owners shall enjoy a right of first refusal within three months of the notification of the intent to assign. Failing agreement as to the price, such price shall be fixed by the competent domestic court. Parties shall have three months with effect from the notification of the judicial decision or, in the event of an appeal, to waive the sale or purchase of the jointly owned share, without prejudice to any possible damages owed; costs shall be borne by the waiving party.
- (f)** A joint owner of a patent may notify the other joint owners that he is relinquishing his share to their benefit. With effect from the entering of this relinquishment in the special register of patents or, with effect from its notification to the Organization, the joint owner in question shall be relieved of all obligations in respect of the other joint owners who, unless otherwise agreed, shall distribute the relinquished share in proportion to their rights in the joint ownership.

Article 11

Employees' inventions and commissioned inventions

- (1)** Where the inventor is an employee, the right to the patent shall be governed by the following provisions in the absence of contractual provisions more favorable to the employee:
 - (a)** Inventions made by employees in performance either of an employment contract encompassing an inventive task consistent with their actual functions, or of studies and research expressly assigned to them, shall belong to the employer. In such case, an employee who makes such an invention shall receive supplementary remuneration which, failing agreement through collective or individual negotiation, shall be fixed by the competent domestic court.

(b) Where an employee is not required by his employment contract to engage in inventive activity, but makes an invention using the techniques and means specific to the establishment, or information it has procured, the right to the patent shall belong to the employee. However, the employer has the right to be granted the ownership or enjoyment of all or part of the rights attaching to the patent protecting the invention of the employee. In the latter case, the employee shall secure a fair price therefor which, failing agreement between the parties, shall be fixed by the competent domestic court. The court shall take into consideration any information that may be brought before it, in particular by the employer and the employee, to calculate a fair price, having regard both to the initial contribution of each party and to the industrial and commercial utility of the invention.

(c) All other inventions shall belong to the employee.

- (2)** In any event, an employee who makes an invention shall immediately inform his employer, who shall acknowledge receipt of the information.
- (3)** The employee and the employer shall share all useful information concerning the invention. They shall refrain from any disclosure that may partly or wholly jeopardize the exercise of the rights conferred by this Annex.
- (4)** Any agreement between the employee and his employer concerning an employee invention shall, on pain of invalidity, be noted in writing.
- (5)** Where the situation referred to in sub-paragraph 1(a) above exists, if the employer expressly relinquishes the right to the patent, the right shall belong to the employee.
- (6)** The provisions of this article shall also apply to employees of the State, public bodies and any other public legal person. However, the amount and terms of payment of the supplementary remuneration referred to in sub-paragraph 1(a) shall be fixed by the domestic legislation of each Member State.
- (7)** Unless otherwise provided for in the contract, the right to the patent for an invention made in fulfillment of an order shall belong to the client.

Article 12

Conversion of a patent application into a utility model application

Any patent application that fulfills the conditions stipulated in Annex II as regards utility models may be converted into an application for a utility model. In such case, the patent application shall be deemed to have been withdrawn and the Organization shall enter a "withdrawn" notice in the Register of Patents.

PART III – GRANT FORMALITIES

SECTION I – PATENT APPLICATIONS

Article 13

Filing of the application

(1) A patent application shall be filed with the Organization or the Ministry responsible for industrial property, in accordance with Article 8 of the Agreement, this Annex and the procedures set forth in the implementing regulations.

(2) The application file shall contain the following:

(a) a patent application addressed to the Director-General of the Organization, in a sufficient number of copies;

(b) proof of payment to the Organization of the filing and publication fees;

(c) an unstamped, private power of attorney, if the applicant is represented by an agent; and

(d) a sealed envelope containing the following:

(i) a specification of the invention for which the application is made, set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry it out;

(ii) any drawings that are necessary or useful for the understanding of the invention;

(iii) any claim or claims defining the scope of the protection sought, which shall not exceed the contents of the specification referred to in sub-paragraph (i) above;

(iv) a descriptive abstract summarizing the contents of the specification, the claim or claims referred to in sub-paragraph (iii) above and any drawings in support of the abstract; and

(v) sufficient indications regarding the best manner of carrying out the invention known to the inventor on the filing date and, where priority is claimed, on the priority date of the application.

Article 14

International application

(1) International applications for the protection of inventions filed by natural or legal persons with their residence or headquarters in the territory of a Member State of the Organization shall be filed with the Organization where the priority of a prior filing in the territory of a Member State of the Organization is not claimed. The Organization shall

then act as a receiving office within the meaning of Articles 2(xv) and 10 of the Patent Cooperation Treaty.

- (2)** Inventions that are the subject of international applications filed with the Organization may not be disclosed and freely worked unless an authorization to that effect is granted.

During that time, applications may not be made public and no certified true copy of the application may be issued without authorization.

The authorizations provided for in paragraphs (1) and (2) above shall be granted by the Director-General.

The authorization provided for in paragraph (1) may be granted at any time.

- (3)** The provisions of paragraph (2) above shall not apply where the applicant does not have his residence or headquarters in the territory of a Member State of the Organization, where the Organization acts as receiving office on behalf of the national office of another State party to the Washington Treaty, or where such a State has been designated as the receiving office by the assembly of the union instituted by that treaty.

- (4)** An implementing regulation shall set forth the procedure for the implementation of paragraphs (1), (2) and (3) above, in particular with respect to the conditions governing the filing and receipt of an international application, the language in which the application must be filed, the fixing of a fee for services rendered (forwarding fee) received on behalf of the Organization and the agent of applicants whose residence or headquarters is abroad.

Article 15 **Filing date**

- (1)** The Organization shall grant as the filing date the date of receipt of the application, provided that at the time of filing, the application contains the following:

- (a)** an express or implicit indication that the grant of a patent is requested;
- (b)** a part which, at first sight, appears to be the description of an invention and one or more claims; and
- (c)** proof of payment of the prescribed fees.

- (2)** For any international application, the filing date shall be that assigned by the receiving office.

Article 16 **Inadmissibility for non-payment**

No application shall be admissible if it is not submitted together with a document noting the payment of the filing fee and the publication fee.

Article 17

Unity of invention

The application shall be restricted to a single principal subject, with the details that constitute it and the uses specified. It shall contain no restrictions, conditions or reservations. It shall have a title that describes precisely and succinctly the purpose of the invention.

Article 18

Claim of priority

- (1)** Any person wishing to avail himself of the priority of an earlier application shall be required to file his patent application within 12 months of the earlier filing date.
- (2)** Within six months of filing the application, the applicant shall attach to the application, or provide to the Organization, the following documents:
 - (a)** a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the filing party;
 - (b)** a certified true copy of the earlier application; and
 - (c)** if he is not the person who filed the earlier application, a written authorization from the applicant or his successors in title authorizing him to avail himself of the priority in question.
- (3)** An applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each right of priority claimed and shall produce proof of payment of the fee within the six-month period mentioned in paragraph (2) above.
- (4)** Any priority claim or priority documents that reach the Organization more than six months after the filing of the application shall entail loss of the right of priority.
- (5)** However, the right of priority referred to in paragraph (4) above may be reinstated in accordance with Article 45 below.
- (6)** The decision rejecting the request for reinstatement may be appealed against before the High Commission of Appeal.

SECTION II – GRANT OF PATENTS

Article 19

Publication of the application

- (1)** The Organization shall publish the following information for each application for a patent or a certificate of addition:
 - (a)** the filing number of the patent application or certificate of addition;
 - (b)** the filing date of the application;

- (c) the company or business name, the surname, first names and address of the applicant;
 - (d) the name and address of the inventor, unless the inventor has requested not to be mentioned in the patent application or certificate of addition;
 - (e) the name and address of the agent, if applicable;
 - (f) an indication of the priority or priorities, if one or more priorities have been validly claimed;
 - (g) the priority date, the name of the country in which, or countries for which, the prior application was filed and the number of the prior application;
 - (h) the title of the invention;
 - (i) the abstract of the invention;
 - (j) the date and number of the international application, if applicable; and
 - (k) the international patent classification symbols.
- (2) For each patent application, the Organization shall also publish the specifications, the claim(s) and any drawings.
- (3) The patent application shall be published within 18 months of the filing date or the priority date, save for international applications.
- (4) Paragraph (2) above shall not apply to international applications.

Article 20 Opposition

- (1) Within three months of publication of the application referred to in Article 19 above, any person may oppose the grant of a patent or a certificate of addition by submitting a written statement to the Organization setting out the reasons for the opposition. The reasons must be based on an infringement of the provisions of Articles 2, 3, 4, 5, 9 or 17 of this Annex or on a prior registered right belonging to the opposing party.
- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may submit a reasoned reply within three months, renewable once on application. The reply shall be transmitted to the opposing party or his agent.
- (3) Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4) Where the Organization considers the opposition to be well-founded:
- (a) for certain claims or for the reasons set forth in Articles 9 and 17, it shall re-examine the patent application; and

(b) for all claims or for the reasons set forth in Articles 2 to 5, it shall end the examination of the application.

(5) Where the Organization considers the opposition not to be well-founded, it shall continue the examination of the application for a patent or for a certificate of addition.

Article 21

Claim of ownership before the organization

(1) Where a person who has no right to the patent files an application for a patent or for a certificate of addition, the person who has a right to the patent may claim the ownership thereof before the Organization within three months of the publication of the application, submitting a written notice setting forth the reasons for his claim.

(2) The Organization shall send a copy of the notice of claim of ownership to the applicant or his agent, who may submit a reasoned response within three months renewable once on application. Such response shall be transmitted to the claimant or his agent.

(3) Before ruling on the claim of ownership, the Organization shall hear the parties or their agents on request.

(4) The Organization's ruling on the claim of ownership shall be appealable before the High Commission of Appeal within 60 days of the notification of the decision to the parties.

(5) The Organization shall only transmit the application if the aforementioned claim is well-founded.

(6) The final decision on the transfer of the application shall be recorded in the special register of the Organization.

Article 22

Division of the application

(1) Any initial patent application concerning several objects may be divided into several applications, called divisional applications:

(a) at least until the decision on the grant of the patent;

(b) during any examination, opposition or claim of ownership proceedings in respect of the patent application; and

(c) during any appellate proceedings concerning the decision on the claim of ownership.

(2) Divisional applications shall retain the filing date of the initial application and, where applicable, the benefit of the right of priority.

(3) A fee shall be payable for all divisional applications.

Article 23

Examination of the application

(1) For all patent applications, an examination shall be conducted to establish the following:

- (a)** the invention that is the subject of the patent application is not excluded, pursuant to Article 2 of this Annex, from the protection conferred by the patent;
- (b)** the claim or claims are consistent with Article 13(2)(d)(iii) of this Annex; and
- (c)** the requirements of Article 17 of this Annex have been met.

(2) A research report shall also be prepared to establish the following:

(a) at the time of filing the application, a patent application filed earlier or benefitting from a validly claimed earlier priority for the same invention is not undergoing the grant process; and

(b) the invention:

- (i)** is new;
- (ii)** results from an inventive step; and
- (iii)** is industrially applicable.

(3) Where the invention involves the use of a microorganism, the Organization shall reserve the right to require the applicant to submit a sample of the microorganism as issued by the depositary institution or by the international depositary authority.

(4) For international applications under the Patent Cooperation Treaty, the Organization may rely on the provisions of Articles 20 and 30 of the Patent Cooperation Treaty respectively concerning the international search report and the international preliminary examination report.

(5) The provisions of paragraph (4) above shall apply *mutatis mutandis* to cases provided for in the validation agreements referred to in Article 10(6) of the Agreement.

Article 24

Amendment of the claims, the specification, the drawings and the abstract

(1) Prior to the grant, the applicant may modify the claims, the specification, the drawings and the abstract.

(2) Such modifications may not exceed the disclosure of the invention appearing in the application as filed.

Article 25

Grant

(1) Where the Organization finds that all the conditions for the grant of the patent have been met and that a search report under Article 23(2), if applicable, has been prepared, it shall notify the decision and grant the patent sought.

Nonetheless, in any event, patents shall be granted at the applicant's own risk and without any guarantee as to the actuality, novelty or merits of the invention or as to the truth or accuracy of the description.

(2) The patent shall be granted on decision by the Director-General of the Organization by a staff member of the Organization duly authorized to that end by the Director-General.

(3) Patents based on international applications under the Patent Cooperation Treaty shall be granted in the same manner as provided for in the foregoing paragraph, but shall also include a reference to the international publication provided for in the Treaty.

(4) Any application for a patent or for a certificate of addition may be withdrawn prior to grant by the person who filed it. The documents shall be returned to him only at his request.

Article 26

Deferment of grant

(1) Notwithstanding Article 25(1), the applicant may request that the patent be granted one year after the filing date of the application if the said application contains an express request to that effect.

A person who has requested the benefit of this provision may renounce it at any time within the one-year period.

(2) The same shall apply to any application that is not accompanied by a copy of the documents provided for in Article 13.

(3) The benefit of the foregoing provision may not be claimed by persons who have already availed themselves of the periods of priority afforded by international treaties, in particular by Article 4 of the Paris Convention for the Protection of Industrial Property.

Article 27

Conditions governing rejection

(1) Any application concerning an invention that is not patentable under Article 2 or does not comply with the provisions of Article 23 shall be rejected.

(2) The same shall apply to any application that is not accompanied by a copy of each of the documents enumerated in Article 13(2)(d).

- (3)** An application that does not comply with the provisions of Article 17 may be divided into a certain number of applications benefitting from the date of the initial application, within six months of the date of notification that the application cannot be accepted as filed because it does not have one principal subject.
- (4)** Any application not meeting the other requirements of Article 13, save for the proof of payment of the fee, and the requirements of Article 17 is defective. The defect shall be notified to the applicant or his agent, according to the provisions of the implementing regulations.
- (5)** Where the corrected documents are not provided within the prescribed period, the patent application shall be refused.
- (6)** No application may be refused under paragraphs (1), (2), (3) or (4) above before the applicant or his agent are afforded the opportunity to correct the application to the extent and according to the procedure prescribed.
- (7)** Notwithstanding the provisions in the preceding paragraphs, the Organization may itself correct any obvious clerical errors contained in the applications.
- (8)** Within 60 days of the notification of the rejection, the applicant may file an appeal with the High Commission of Appeal.

Article 28

Registration of acts in the special register of patents

Subject to the provision of Articles 36 and 38 below, the implementing regulations shall fix the acts that must be registered in the special register of patents and published in the Official Bulletin of Industrial Property.

SECTION III – CERTIFICATES OF ADDITION

Article 29

Right to certificates of addition

- (1)** The patent owner or his successors in title are entitled, throughout the duration of the patent, to make changes, improvements or additions, complying when filing the application with the formalities stipulated in Articles 13, 16, 17 and 18 of this Annex.
- (2)** Such changes, improvements or additions shall be recorded in certificates granted in the same form as the main certificate of registration which, as from the dates of application and grant respectively, shall have the same effects as the said main certificate of registration.
- (3)** Certificates of addition obtained by one of the entitled persons shall benefit all the others.

Article 30

Term of the certificate of addition

Certificates of addition shall terminate with the main patent. However, invalidation of the main patent shall not *ipso jure* invalidate the corresponding certificate or certificates of addition and, even where absolute invalidity has been declared under the provisions of Article 46(3), the certificate or certificates of addition may survive the main certificate of registration until the normal term of the main certificate expires, subject to continued payment of the annual fees that would have been payable had the certificate of registration not been invalidated.

Article 31

Conversion of an application for a certificate of addition into a patent application

Provided that a certificate of addition has not been granted, the applicant may effect the conversion of his application for a certificate of addition into an application for a patent, the date of which shall be the date of the application for the certificate. Any patent thus granted shall attract the same annual fees as a patent filed on the latter date.

Article 32

Dependence of patents linked to the same object

Any person who obtains a patent for an invention linked to the object of another patent shall have no right to work the previously patented invention and, reciprocally, the owner of the previous patent may not work the invention that is the subject of the new patent.

SECTION IV – COMMUNICATION AND PUBLICATION CONCERNING PATENTS AND CERTIFICATES OF ADDITION

Article 33

Formalities for the conversion of a certificate of addition into a patent application

Any patent holder who, for the purpose of a change, improvement or addition, seeks to obtain a main patent instead of a certificate of addition expiring with the prior patent shall fulfill the formalities stipulated in Articles 13 and 18.

Article 34

Communication of descriptions and drawings of patents and certificates of addition

- (1)** Descriptions and drawings of granted patents and certificates of addition shall be kept at the Organization or, after publication of the grant of the patents or the certificates of addition provided for in Article 35, shall be communicated on request.
- (2)** Any person may obtain an official copy of the said descriptions, drawings and photographs after the date of publication.
- (3)** The provisions of paragraphs (1) and (2) above shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents authorizing certain such applicants to claim that priority.
- (4)** A holder of an application for a patent or a certificate of addition who wishes to avail himself of the priority of his filing before the grant of the patent or the certificate of addition may obtain an official copy of his application.

Article 35

Publication of patents and certificates of addition

(1) The Organization shall publish the following information for each patent or certificate of addition granted:

- (a)** the number of the patent or certificate of addition;
- (b)** the filing number of the application;
- (c)** the filing date of the application;
- (d)** the company name, surname, first name and address of the holder of the patent;
- (e)** the name and address of the inventor, unless he has requested not to be named in the application for the patent or certificate of addition;
- (f)** the name and address of the agent, if applicable;
- (g)** a statement as to priority or priorities, if such have been validly claimed;
- (h)** the date of the priority, the country in which, or the countries for which, the earlier application was filed and the number of the earlier application;
- (i)** the grant date;
- (j)** the title of the invention;
- (k)** the abstract of the invention;
- (l)** the date and number of the international application, if applicable; and
- (m)** the international patent classification symbols.

(2) The Organization shall also publish the description, any claims and the drawings, if applicable.

(3) The implementing regulations shall fix and determine the procedure for the publication of the specification of the invention, any drawings, claims and the abstract.

SECTION V – TRANSFER AND ASSIGNMENT OF PATENTS AND CONTRACTUAL LICENSES

Article 36

Transfer and assignment of rights

- (1)** The rights subsisting in a patent application or a patent shall be transferable in whole or in part. They may be assigned in whole or in part under an exclusive or non-exclusive exploitation license.
- (2)** Acts involving transfer of ownership, licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge in respect of an application for a patent or a patent shall, on pain of invalidity, be evidenced in writing.

Article 37

Enforceability against third parties

- (1)** The acts referred to in Article 36 above shall not be enforceable against third parties unless they are recorded in the special register of patents kept by the Organization and published in the Official Bulletin of Industrial Property. Nonetheless, prior to its registration, an act shall be enforceable against third parties who have acquired rights after the date of such act, but who were aware of the act at the time of acquiring the rights.

A copy of such acts shall be kept by the Organization.

- (2)** In accordance with regulations, the Organization shall furnish to any person who so requests a copy of the entries in the special register of patents and a record of the entries concerning patents that are the subject of a pledge, or a certificate attesting to the absence of any such entries.

Article 38

Working of the patent and its certificates of addition as of right

Persons who have obtained from a patentee or from his successors in title the right to work an invention shall benefit as of right from certificates of addition subsequently granted to the patentee or to his successors in title. Reciprocally, the patentee or successors in title shall benefit from certificates of addition that may subsequently be granted to persons having obtained the right to exploit the invention.

Article 39

License contract

- (1)** The owner of a patent may, by contract, grant to a natural or legal person a license enabling the person to exploit the patented invention.
- (2)** The duration of the license may not exceed that of the patent.
- (3)** The license contract shall be prepared in writing and signed by the parties.

- (4) The license contract shall be entered in the special register of patents. It shall not be binding on third parties until it is entered in the register and published in the format specified in the implementing regulations of this Annex.
- (5) The license shall be removed from the register at the request of the owner of the patent or the licensee on presentation of proof of the expiry or termination of the license contract.
- (6) Unless otherwise stipulated in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or working the patented invention himself.
- (7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from working the patented invention himself.

Article 40 **Invalid clauses**

- (1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they constitute unfair competition practices and, in general, the same shall apply to clauses imposing on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the patent or not necessary for the upholding of such rights.
- (2) The following shall not be considered restrictions within the meaning of paragraph (1) above:
- (a) restrictions relating to the extent, the scope or the duration of exploitation of the patented invention; and
 - (b) the obligation on the licensee to abstain from any act liable to impair the validity of the patent.
- (3) Unless otherwise stipulated in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 41 **Formal recognition of invalid clauses**

The invalid clauses referred to in Article 40 above shall be formally recognized by the competent domestic court at the request of any person.

Article 42

Licenses of right

- (1)** Subject to compliance with the stipulations of a previously registered license, a patent owner may apply to the Organization to have the indication "licenses of right" entered in the register in respect of his patent. The indication shall be entered in the special register of patents and shall be immediately published by the Organization.
- (2)** The entry of such an indication in the register shall entitle any person to obtain a license to work the said patent on terms that shall, failing agreement between the parties concerned, be fixed by the competent domestic court. It shall also entail a reduction in the annual fee.
- (3)** The owner of the patent may at any time apply to the Organization for forfeiture of the "licenses of right" entry. If no license is in force, or if all the licensees agree to forfeiture, the Organization shall declare forfeit the entry on payment of all the annual fees that would have been payable had the entry not been made in the register.
- (4)** The provisions of Article 29(1) of this Annex shall also apply to licenses of right.
- (5)** The beneficiary of a license of right may neither assign it nor grant sublicenses under it.

PART IV – INVALIDITY, CANCELLATION AND RELATED ACTION

SECTION I – INVALIDITY AND CANCELLATION

Article 43

Invalidity

- (1)** Patents granted in the following cases shall be declared invalid if:
 - (a)** the invention is not new, does not involve an inventive step or is not industrially applicable;
 - (b)** the invention is not patentable within the meaning of Article 2, without prejudice to the penalties that might be incurred for the manufacture or marketing of prohibited articles; and
 - (c)** the specification attached to the patent does not comply with the provisions of Article 13(d)(i) above, or does not completely and honestly state the true methods of the inventor.
- (2)** Certificates in respect of changes, improvements or additions that are not linked to the principal patent, as provided for in this Annex, shall likewise be declared invalid.
- (3)** Invalidity may relate to all or only some of the claims.

Article 44
Cancellation

- (1)** Any patentee who fails to pay his annual fees by the anniversary date of the filing of his patent application shall forfeit all his rights.
- (2)** However, the patentee concerned shall be allowed a six-month period of grace within which he may still validly pay the annual fees. In such case, he shall also pay an additional fee.
- (3)** Payments made to complement annual or additional fees during the six-month period shall be considered valid.
- (4)** Payments made as annual or additional fees payable for a patent application resulting either from the conversion of an application for a certificate of addition under Article 31 above or from the division of a patent application under Article 27(3) above shall also be considered valid, provided that the payments are made within six months of the date of the application for conversion or the filing date of the applications resulting from the division.

Article 45
Restoration

- (1)** Without prejudice to the provisions of Articles 43 and 44 above, where a patent has not been renewed owing to circumstances beyond the control of the owner, the owner or his successors in title may apply for its restoration, on payment of the requisite annual fee and of a surcharge whose amount shall be fixed by regulation, within six months of the date on which the circumstances ceased to exist, and within two years of the date on which renewal was due.
- (2)** The application for restoration of the patent, together with proof of payment of the fee and surcharge mentioned in paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the successors in title consider the restoration justified.
- (3)** The Organization shall examine such grounds and shall either restore the patent or refuse the application if it does not consider the grounds valid.
- (4)** Restoration shall not entail extension of the maximum term of the patent.
- (5)** Restoration of the patent shall likewise entail the restoration of any related certificates of addition.
- (6)** Restored patents shall be published by the Organization in the format prescribed by the implementing regulations relating to this Annex.
- (7)** Paragraphs (1) to (6) shall be applicable where the patent application was not filed within the time limits set by international treaties.

- (8) Appeals against decisions of the Organization concerning restoration shall be brought before the High Commission of Appeal within 60 days of the date of receipt of notice of the decisions.

SECTION II – ACTION FOR INVALIDITY OR FORFEITURE

Article 46

Action for invalidity or forfeiture

- (1) Action for invalidity or forfeiture may be brought by any person having an interest therein.
- (2) The Office of the Public Prosecutor may join any action seeking the invalidity or forfeiture of a patent as an intervening party and make submissions seeking a declaration of invalidity or forfeiture of the patent.
- (3) It may enter directly a principal suit seeking a declaration of invalidity in the cases provided for in Article 43(1)(b).
- (4) In the cases provided for in paragraph (3) above, all holders of rights in the patent whose acts have been entered in the special register of patents of the Organization under Article 37 shall be party to the proceedings.

Article 47

Competent court

- (1) The action referred to in Article 46 above and all disputes relating to patent ownership shall be brought before the competent domestic courts.
- (2) If action is simultaneously brought against the owner of the patent and one or more limited licensees, it shall be brought before the court sitting in the original or elected domicile of the said owner.
- (3) The matter shall be heard and determined in the manner prescribed for summary proceedings. If necessary, it shall be communicated to the Office of the Public Prosecutor.

Article 48

Recording of the judicial decision on invalidity or forfeiture

Where the absolute invalidity or forfeiture of a patent has been pronounced by a court decision that has become *res judicata*, the competent court shall so inform the Organization and the invalidity or forfeiture pronounced on the territory of a Member State shall be entered in the special register of patents and published in the format specified in Article 35 above for granted patents.

PART V – NON-VOLUNTARY LICENSES

**SECTION I – NON-VOLUNTARY LICENSE FOR NON-WORKING AND
DEPENDENT PATENTS**

Article 49

Non-voluntary license for non-working

(1) At the request of any person four years after the filing date of the patent application or three years after the date of grant of the patent, whichever period expires later, a non-voluntary license may be granted where one or more of the following conditions are fulfilled:

- (a)** the patented invention is not being worked on the territory of a Member State at the time of the request;
- (b)** the working of the patented invention on such territory does not meet the demand for the protected product on reasonable terms;
- (c)** owing to the refusal of the owner of the patent to grant licenses on reasonable commercial terms and procedures, the establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may not be granted if the owner of the patent provides legitimate reasons for the non-working of the invention.

Article 50

Non-voluntary license for a dependent patent

Where a patented invention cannot be worked without infringing the rights under an earlier patent whose owner refuses to authorize its use on reasonable commercial terms and procedures, the owner of the later patent may obtain a non-voluntary license for such use from the competent domestic court on the same terms as those that apply to the non-voluntary licenses granted under Article 49 and on the following additional conditions:

- (a)** the invention claimed in the later patent must represent substantial technical progress, or be of considerable economic interest, in relation to the invention claimed in the earlier patent;
- (b)** the owner of the earlier patent has the right to a reciprocal license on reasonable terms for the use of the invention claimed in the later patent; and
- (c)** the use authorized in relation to the earlier patent shall be non-assignable, save where the later patent is also assigned.

Article 51

Application for the grant of a non-voluntary license

(1) The application for the grant of a non-voluntary license shall be made to the competent domestic court of the domicile of the patentee or, if the patentee is domiciled abroad, to the competent domestic court of either his elected domicile or the place in which he has named an agent for the purposes of filing. Only requests made by persons domiciled on the territory of a Member State shall be considered.

The owner of the patent or his agent shall be informed thereof as soon as practicable.

(2) The application shall contain the following:

- (a)** the name and address of the applicant;
- (b)** the title of the patented invention and the number of the patent for which a non-voluntary license is sought;
- (c)** evidence that the working of the patented invention on the above-mentioned territory does not meet demand for the protected product on reasonable terms; and
- (d)** where a non-voluntary license is sought under Article 49 above, a statement by the applicant in which he undertakes to work the patented invention industrially on the territory of one of the Member States so as to meet the needs of the market.

(3) The request shall be accompanied by the following:

- (a)** proof that the applicant has previously approached the owner of the patent, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him on reasonable commercial terms and procedures and within a reasonable time;
- (b)** where a non-voluntary license is sought under Article 49 and 50, proof that the applicant is capable of industrially working the patented invention.

Article 52

Grant of non-voluntary license

(1) The competent domestic court shall consider whether the application for the grant of a non-voluntary license satisfies the requirements of Article 51 above. Where the application does not satisfy such requirements, the court shall reject it. Before rejecting the application, the court shall inform the applicant of the defects in his application and shall allow him to make the necessary corrections.

(2) Where the application for the grant of a non-voluntary license satisfies the requirements of Article 51 above, the competent domestic court shall notify it to the owner of the patent concerned and to any licensee whose name appears in the register of patents, and shall invite them to submit written observations on the application within three

months. Such observations shall be communicated to the applicant. The court shall likewise notify the application to any government authorities concerned. The court shall hold a hearing on the application and the observations received, to which the applicant, the owner of the patent, any licensee whose name appears in the register of patents and any government authorities concerned shall be summonsed.

(3) Once the proceedings prescribed in paragraph (2) above have been completed, the court shall rule on the request, either granting or refusing the non-voluntary license.

(4) Where the non-voluntary license is granted, the decision of the court shall specify the following:

(a) the scope of the license, specifying in particular the acts referred to in Article 6(3) of this Annex which it encompasses and the period for which it is granted, it being understood that a non-voluntary license granted under Article 49 or 50 above may not encompass the act of importation; and

(b) the amount of the remuneration owed by the licensee to the owner of the patent; failing agreement between the parties, such remuneration shall be equitable, with due regard to all the circumstances of the case. The amount of the remuneration shall be subject to judicial review on application by the beneficiary of the non-voluntary license or the patentee.

(5) The decision of the court shall be reasoned. Once the decision is final, it shall be transmitted to the Organization by the more diligent party.

(6) The Organization shall enter it into the special register and publish a notice thereof. The Organization shall notify the decision to any licensee whose name appears in the special register of patents.

Article 53

Rights and obligations of the holder of a non-voluntary License

(1) After the expiry of the time limit for appeal specified in Article 56 of this Annex, or once an appeal decision has been handed down that wholly or partly upholds the decision by which the competent domestic court granted the non-voluntary license, the grant of the license shall authorize the licensee to work the patented invention according to the terms laid down in the decision of the court or in the appeal decision, and shall require him to pay the remuneration specified in the judicial decisions.

(2) The grant of a non-voluntary license shall not affect either license contracts in force or non-voluntary licenses in force and shall not preclude the conclusion of other license contracts or the grant of other non-voluntary licenses.

However, the patentee may not grant to other licensees more favorable terms than those of the non-voluntary license.

Article 54

Limitation of the non-voluntary license

- (1)** A beneficiary of a non-voluntary license may not grant any third party permission to perform any of the acts that he is authorized to perform under the non-voluntary license without the consent of the owner of the patent.
- (2)** Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may be transferred together with the establishment of the beneficiary of the non-voluntary license or with the portion of his establishment that exploits the patented invention. No such transfer shall be valid without the authorization of the competent domestic court. Before granting the authorization, the court shall afford the owner of the patent a hearing. The court shall notify the authorization to the Organization, which shall register and publish it. Any transfer authorized shall mean that the new beneficiary of the non-voluntary license shall accept the same obligations as those that were incumbent on the former beneficiary.

Article 55

Amendment and withdrawal of the non-voluntary license

- (1)** On the request of the owner of the patent or the beneficiary of the non-voluntary license, the competent domestic court may amend the decision on the grant of the non-voluntary license where new facts justify such amendment.
- (2)** At the request of the owner of the patent, the competent domestic court shall withdraw the non-voluntary license:
 - (a)** if the grounds for its grant have ceased to exist;
 - (b)** if the beneficiary exceeds the scope of the license under Article 52(4)(a) above; or
 - (c)** if the beneficiary is in arrears with the payment of the remuneration referred to in Article 52(4)(b) above.

In the situations provided for in sub-paragraphs (a) and (b) above, the withdrawal may be requested by the other licensees.

- (3)** Where the non-voluntary license is withdrawn under paragraph (2)(a) above, the beneficiary of the non-voluntary license shall be allowed a reasonable period within which to cease working the invention, where immediate cessation would have serious adverse consequences for him.
- (4)** The provisions of Articles 51 and 52 of this Annex shall apply to the amendment or withdrawal of the non-voluntary license.

Article 56

Appeals

- (1)** Within one month of the publication specified in Articles 52(6) above, the owner of the patent, the licensee whose name appears in the special register or any person who has

sought the grant of a non-voluntary license may appeal to the competent higher court against a decision taken under Articles 52(3), 54(2) or 55 above.

(2)The appeal referred to in paragraph (1) above contesting the grant of a non-voluntary license, the authorization to transfer a non-voluntary license or the amendment or withdrawal of a non-voluntary license shall have suspensive effect.

(3)The decision on appeal shall be notified to the Organization, which shall register and publish it.

Article 57

Cessation of the obligations of the beneficiary of the non-voluntary license

Any action seeking invalidation of the patent shall be directed against the patentee. If a final legal judgement declares the patent invalid, the beneficiary of the non-voluntary license shall be released from all obligations resulting from the decision granting him the non-voluntary license.

SECTION II – NON-VOLUNTARY LICENSES FOR NATIONAL EMERGENCIES

Article 58

Non-voluntary licenses in the national interest

(1)Where a patent is vital to the economy of a country, public health or national defense, or where its non-working or insufficient working severely jeopardizes meeting the country's needs, it may be subjected to the non-voluntary licensing regime by administrative order of the competent Minister of the Member State concerned.

(2)The administrative order referred to in paragraph (1) above shall determine the following after negotiation among the interested parties, the administration or the beneficiary organization:

(a)the term of the license;

(b)the scope of the license, in particular authorized acts of working the patent, including importation, quantities of products and the territorial scope of the license champ; and

(c)the amount of the fees.

(3)Failing amicable agreement between the owner of the patent and the administration concerned on the conditions governing the license as set forth in paragraph 2 above, said conditions shall be fixed by authority of the competent Minister of the Member State. However, these conditions may be revised by the competent domestic court seized by the more diligent party.

PART VI – OTHER LEGAL PROCEEDINGS AND PROCEDURE

SECTION I – COMMON PROVISIONS

Article 59

Competent courts

- (1) Civil action concerning patents shall be brought before the competent domestic courts and heard as for summary proceedings.
- (2) Where action for counterfeiting is brought before the competent domestic court for criminal matters, it shall rule on the challenges brought by the defendant regarding either invalidity or forfeiture of the patent, or matters relating to ownership of the patent.

Article 60

Acts prior to grant

Acts occurring prior to the grant of a patent shall not be considered to have infringed the rights relating thereto. However, acts may be recorded and prosecuted where they occur after notification to the alleged counterfeiter of an official copy of the specification of the invention attached to the patent application. In such case, the competent domestic court seized shall suspend its ruling until the publication of the grant of the patent.

Article 61

Claim of ownership before the court

- (1) Where a patent is issued or acquired either for an invention in infringement of the rights of the inventor or his successors in title, or in violation of a legal or contractual obligation, the injured party may claim ownership of the patent.
- (2) Action to establish title shall be brought within three years of the publication of the grant or acquisition of the patent.
- (3) However, in case of bad faith at the time of the grant or acquisition of the patent, the time limit shall be three years with effect from the exhaustion of the patent right.
- (4) The final decision transferring the patent shall be notified to the Organization by the more diligent party. The Organization shall enter it into the special register and publish a notice to that effect. It shall notify the decision to any beneficiary of a license whose name appears in the special register.

SECTION II – CIVIL AND CRIMINAL ACTION

Article 62

Counterfeiting

- (1) Subject to the provisions of Articles 7 and 49 to 58, any infringement of the rights of the patent owner, by making use of the means that are the object of his patent, by concealment, by sale or offering for sale or by bringing into the territory of one of the Member States, shall constitute counterfeiting.

(2) Counterfeiting incurs the civil and criminal responsibility of perpetrators.

(3) Counterfeiting may be proven by all means.

Article 63

Cause of action

(1) Action for counterfeiting shall be brought by the patentee. Nonetheless, the beneficiary of an exclusive right of working and the holder of a non-voluntary license may bring action for counterfeiting, unless otherwise provided for if, after notice is served, the patentee does not avail himself of this right within three months of the notice.

(2) Any licensee may intervene in action for counterfeiting brought by the patentee, in order to obtain reparation for his own prejudice suffered.

Article 64

Preventing infringement

(1) Any person empowered to bring action for counterfeiting may make an urgent application to the competent domestic court seeking, if necessary under financial compulsion, an order against the alleged counterfeiter or the intermediaries whose services he uses, instituting any measure intended to prevent an imminent infringement of the rights vested in the title or to prevent the continuation of the alleged infringement.

(2) The competent domestic court may also order all urgent measures on application, where circumstances require that such measures should not be taken *inter partes*, in particular where any delay is likely to be irreparably prejudicial to the applicant. On receipt of an urgent or *ex parte* application, the court may only order the measures sought if the evidence, reasonably accessible to the applicant, make it likely that his rights are being infringed or that such infringement is imminent.

(3) The competent domestic court may prohibit the continuation of the alleged acts of counterfeiting, make such acts contingent on guarantees intended to secure compensation for the applicant, if warranted, or order the seizure or transfer to a third party of the products suspected of infringing the rights conferred by the title, to prevent their introduction or circulation in commercial channels.

(4) On receipt of an urgent or *ex parte* application, the competent domestic court may make the measures it orders contingent on the provision of guarantees by the applicant for the purpose of compensating the defendant if the proceedings for counterfeit are later found to be without basis or if the measures are cancelled.

(5) Where measures taken to stop an infringement of rights are ordered before action is brought on the merits, the applicant shall bring action, either before a civil or criminal court, within 20 days with effect from the day following the day on which the measures are implemented. Otherwise, on application by the defendant, who is not required to provide reasons for his application, the measures ordered shall be cancelled, without prejudice to any damages that may be claimed.

Article 65

Seizure for counterfeiting

- (1)** Any person with the *locus standi* to proceed against counterfeit is entitled to take measures anywhere, including at the border, to effect either a detailed inventory, with or without the taking of samples, or the physical seizure of the allegedly counterfeit products or procedures.
- (2)** Seizure for counterfeiting is effected by any bailiff, public officer or judicial officer, including customs officials, assisted if applicable by one or more experts designated by the applicant, following an order by the competent domestic court, made on application and on presentation of the patent. Where necessary, the customs authorities shall immediately inform the applicant and the importer of the execution of the measures ordered.
- (3)** Where grounds for seizure exist, the above-mentioned order may require the applicant to make a security deposit, which he must provide before the seizure is effected. The deposit shall be adequate without deterring applicants from availing themselves of the procedure.
- (4)** The security deposit shall always be required of foreigners seeking a seizure.
- (5)** The person in possession of the objects identified or seized shall be given a copy of the order and, where appropriate, a copy of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff, public officer or judicial officer or the customs official, as the case may be.

Article 66

Time limit for initiating proceedings on the merits

Should the applicant fail to institute criminal or legal proceedings within 10 days of the seizure or inventory, such seizure or inventory shall *ipso jure* be void, without prejudice to any damages that may be claimed.

Article 67

Evidence

- (1)** For the purposes of the civil proceedings for infringement of the owner's rights referred to in Article 6, if the subject matter of the patent is a process for making a product, the court shall be empowered to order the defendant to prove that the process used to make an identical product is different from the patented process in one of the following situations:
 - (a)** the product made by the process is new; or
 - (b)** there is a high probability that the identical product was made by means of the process and the owner of the patent was unable, in spite of reasonable efforts, to establish what process was actually used.

(2) Where evidence to the contrary is brought, the legitimate interests of the defendant in the protection of his manufacturing secrets shall be safeguarded.

Article 68

Search for information

(1) If so requested, the competent domestic court may, if necessary under financial compulsion and for the purposes of determining the origin and distribution networks of the counterfeit products or processes that are violative of the applicant's rights, order the disclosure of all documentation or information held by the defendant or by any person found in possession of counterfeit products or found applying counterfeit processes or providing services used in counterfeiting or reported to be involved in the production, manufacture or distribution of such products, the application of such processes or the provision of such services.

(2) The disclosure of documents or information may be ordered if there is no legitimate impediment.

(3) The documents or information sought shall concern the following:

(a) the names and address of producers, manufacturers, distributors, suppliers and other persons previously in possession of products, processes or services, as well as of wholesalers and retailers; and

(b) the quantities produced, sold, delivered, received or ordered, as well as the price for which the products, processes or services were sold.

Article 69

Determination of damages

The court seized of the matter shall calculate the amount of the damages, having regard to the adverse financial effects, including loss of earnings, suffered by the prejudiced party, the profit made by the counterfeiter and the moral damages caused to the title owner as a result of the violation.

Article 70

Limitation of time

The counterfeit proceedings provided for in this chapter shall be limited to five years with effect from the date of the alleged acts.

Article 71

Counterfeiting offense and criminal penalties

The offense of counterfeiting shall be punishable by imprisonment for one to three years and a fine of 5,000,000 to 30,000,000 CFA francs or one of these penalties alone, without prejudice to civil damages.

Article 72

Aggravating circumstances

- (1)** In the event of recidivism or aggravating circumstances, the above-mentioned penalties shall be doubled.
- (2)** Recidivism occurs where an offender has been convicted of one of the offenses provided for in this Annex within the five previous years.
- (3)** The penalties provided for in Article 71 above shall be doubled if the counterfeiter is a person who has worked or been employed in the workshop or establishment of the patentee or if the counterfeiter, in association with a worker or employee of the patentee, thereby had knowledge of the processes described in the patent.
- (4)** In the latter case, the worker or employee may be prosecuted as an accomplice.

Article 73

Mitigating circumstances

The provisions of legislation in Member States regarding mitigating circumstances shall apply to offenses provided for in this Annex.

Article 74

Initiation of criminal proceedings

Criminal proceedings may be brought concurrently by the Public Prosecutor's Office and the prejudiced party.

Article 75

Additional penalties

- (1)** In the event of a conviction, the competent domestic court in civil or criminal matters shall order the confiscation or destruction of objects found to be counterfeit depending on their nature and, where applicable, the confiscation or destruction of implements or tools specially intended for their manufacture, in respect of the counterfeiter, the receiver, the introducer or the retailer.
- (2)** The competent domestic court may also order any appropriate measures to publicize the verdict, in particular its posting or publication in whole or as excerpts in such newspapers or on such online public communication services as it designates, according to its stipulations.
- (3)** The measures provided for in paragraph (2) above may be instituted even in the event of an acquittal.
- (4)** In the event of a conviction, the competent domestic civil court may order in addition to the publicity measures referred to in the preceding paragraph, at the request of the prejudiced party, that the products found to be counterfeit and the materials and instruments principally employed in their creation or manufacture be withdrawn from channels of trade, permanently removed from such channels, destroyed or confiscated for the benefit of the prejudiced party.

- (5) The measure provided for in this article shall be ordered at the cost of the counterfeiter.

Article 76
Usurpation

Any person who, by means of signs, advertisement, marks or stamps improperly avails himself of the status of owner of a patent issued in accordance with this agreement and its implementing regulations or after the expiry of a previous patent shall be punishable by a fine of 1,000,000 to 5,000,000 CFA francs. In the event of recidivism, the fine may be doubled.

SECTION III – BORDER MEASURES

Article 77
Measures on request

- (1) The customs administration may, on written application by any person, supported by proof of his right, detain any goods it suspects to be counterfeit when conducting controls.
- (2) The public prosecutor, the applicant and the importer of the goods shall be immediately informed by the customs services of such detention.
- (3) The detention measure shall be lifted *ipso jure* within 10 working days of the notification of the detention of the goods if the applicant fails to provide proof to the customs services:
- (a) of the interim measures; or
 - (b) of his application to the competent domestic court in either civil or criminal matters and his provision, where applicable, of the requisite guarantees to cover any responsibility he may incur where the alleged counterfeiting is ultimately not found to exist.
- (4) For the purposes of taking the legal action referred to in the preceding paragraph, the applicant may request communication by the customs administration of the names and addresses of the sender, importer and intended recipient of the detained goods, together with their quantity, notwithstanding provisions governing professional secrecy by which customs officials are bound.
- (5) On expiry of the 10-day time limit mentioned in paragraph (3) above, where the decision to suspend the free movement of goods is not taken by a judicial authority or by an independent administration, the owner, the importer or the intended recipient of the goods may, on payment of a security deposit, cause the detention order to be suspended.

Article 78

***Ex-Officio* action**

- (1) The customs authorities may *ex officio* decide to detain suspect goods where they have *prima facie* evidence that the goods are counterfeit. The authorities may at any time request the owner of the title to provide any information that might assist them in exercising their powers.
- (2) The holder of the right, the importer and the exporter shall be immediately informed of the detention.
- (3) The liability of the customs authorities may be incurred in the event of unjustified detention, save where they acted in good faith.

PART VII – MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Article 79

Continuing validity of patents granted or recognized pursuant to the Bangui Agreement, Act of February 24, 1999

- (1) Patents granted pursuant to the provisions of the Bangui Agreement, Act of February 24, 1999 and its Annex I shall remain valid.
- (2) The rights granted by the said patents shall end on their normal expiry date in accordance with this Article.

Article 80

Acquired rights

- (1) This Annex shall apply to applications for patents filed as from the date of its entry into force, subject to the rights acquired under Annex I of the Bangui Agreement, Act of February 24, 1999.
- (2) Applications for patents filed before the date of entry into force of this Annex shall remain subject to the rules that were applicable at the time of their filing.
- (3) Nonetheless, the exercise of rights arising from patents granted in accordance with paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.
- (4) Annex I of the Bangui Agreement, Act of February 24, 1999 is repealed.

ANNEX II
UTILITY MODELS

PART I – GENERAL PROVISIONS

Article 1

Definition and criteria

- (1)** Within the meaning of this Annex, utility models protected by registration certificates granted by the Organization shall be implements of work or objects intended to be utilized or parts of such implements or objects, provided they are useful for the work or employment for which they are intended on account of a new configuration, a new arrangement or a new component device and are industrially applicable.
- (2)** The following in particular shall not be considered to be objects of a utility model within the meaning of paragraph (1):
- (a)** discoveries, scientific theories and mathematical methods;
 - (b)** esthetic creations;
 - (c)** schemes, rules or methods in performing mental acts, for playing games or in doing business, or computer programs; and
 - (d)** presentations of information.
- (3)** The provisions of paragraph (2) above shall not exclude protection as a utility model, save where the protection is requested for the above-mentioned elements or activities considered as such.

Article 2

Novelty

- (1)** The implement or object or the parts of the one or the other as specified in Article 1 above shall not be considered new if, on the date of the filing of the application for registration with the Organization, they have been described in publications or if they have been publicly used on the territory of a Member State or a third-party State for at least six months.
- (2)** The novelty referred to in paragraph (1) above shall not be denied if, during the twelve months preceding the date specified in paragraph (1) above, the implement or object or the parts of the one or the other have been the subject of a disclosure resulting from the following:
- (a)** manifest abuse against the applicant or his predecessor in title; or
 - (b)** the fact that the applicant or his predecessor in title displayed them at an official or officially recognized international exhibition.

Article 3
Industrial applicability

A utility model shall be considered industrially applicable if its object can be made or used in any kind of industry. The term "industry" shall be understood in its broadest sense and shall in particular encompass handicrafts, agriculture, fishery and services.

Article 4
Subject matter not protected as a utility model

- (1)** A utility model according to Article 1 of this Annex may be not registered if it is contrary to public policy or morality, public health, the national economy or national defense, it being understood that the exploitation of the said model shall not be considered contrary to public policy or morality merely because it is prohibited by law or regulation.
- (2)** No utility model may be protected under this Annex if it has already been the subject of a patent or a utility model registration based on a prior application or an application validly claiming an earlier priority.

Article 5
Rights conferred

Subject to the conditions and within the limits fixed by this Annex, the owner of a certificate of registration shall have the right to prohibit any person from exploiting the utility model by performing any of the following acts: manufacturing, offering for sale, selling and utilizing the utility model, and importing and holding it for the purposes of offering it for sale, selling it or utilizing it.

Article 6
Term of protection

Subject to the provisions of Article 35 below, the term of protection conferred by the certificate of registration of a utility model shall expire at the end of the tenth year with effect from the filing date of the application for registration.

Article 7
Right to the certificate of registration of the utility model

- (1)** The right to the registration of a utility model shall belong to the inventor; the applicant shall be deemed to be the owner of the right.
- (2)** If and where several persons have created the same invention independently of one another, the right to registration as a utility model shall belong to the person who filed the application whose filing date or, in the event of a priority claim, whose validly claimed priority date, is earliest, provided the application is not withdrawn, abandoned or refused.
- (3)** Where several persons have jointly created an invention, the right to its registration as a utility model shall belong to them jointly; the title shall be granted to them as joint owners.

(4) The right to the registration of a utility model may be assigned or transferred by succession.

(5) If a person not entitled to a registration certificate for the utility model files an application, the entitled person may institute proceedings for transfer of the application or, where the title has already been granted, the transfer of the certificate of registration for the utility model. The proceedings for the transfer of the application shall be subject to a five-year time limit as from the date of publication of the certificate of registration for the utility model. Proceedings against a defendant who acts in bad faith shall not be time-barred.

Article 8

Joint ownership of the certificate of registration of the utility model

Unless otherwise stipulated, joint ownership of a certificate of registration of a utility model shall be governed by the following provisions:

- (a)** Each joint owner may work the invention to his profit, provided he makes fair compensation to the other joint owners who are not personally working the invention or have not granted exploitation licenses. In the absence of an amicable agreement, such compensation shall be determined by the competent domestic court.
- (b)** Each of the joint owners may bring action for counterfeiting to his sole benefit. The joint owner who brings action for counterfeiting shall notify the application to the court to the other joint owners; any ruling on the action shall be held in abeyance until proof of such notification is provided.
- (c)** Each joint owner may grant a non-exclusive exploitation license to a third party, to his benefit, provided he makes fair compensation to the other joint owners who are not personally working the invention or have not granted exploitation licenses. In the absence of an amicable agreement, such compensation shall be determined by the competent domestic court.

Nonetheless, the intention to grant a license shall be notified to the other joint owners, together with an offer to transfer the share at a specific price.

Within three months of such notification, any of the joint owners may challenge the granting of the license, provided he acquires the share of the person who wishes to grant the license.

Failing agreement as provided for in the preceding paragraph, the price shall be determined by the competent domestic court. The parties shall have one month with effect from the notification of the first instance or appellate judgement to relinquish the grant of the license or the purchase of the joint ownership share without prejudice to any damages owed; costs shall be borne by the relinquishing party.

- (d) An exclusive exploitation license may only be granted with the agreement of all the joint owners or by leave of the court.
- (e) Each joint owner may assign his share at any time. Joint owners shall have a right of first refusal for three months as from the notification of the intent to assign. Failing agreement as to price, the price shall be determined by the competent domestic court. Parties shall have one month with effect from the notification of the first instance or appellate judgement to relinquish the sale or purchase of the joint owner's share, without prejudice to any damages due. The costs shall be borne by the relinquishing party.
- (f) A joint owner of a certificate of registration of a utility model may notify other joint owners that he is relinquishing his share to their benefit. With effect from the notification of such relinquishment to the Organization, the joint owner in question shall be discharged from all obligations in respect of the other joint owners, who shall divide the relinquished share among themselves in proportion to their rights in the joint ownership, unless otherwise agreed.

Article 9

Creations by employees and on order

- (1) Where the inventor of a utility model is an employee, the right to the industrial property title, in the absence of contractual provisions more favorable to the employee, shall be governed by the following provisions:
 - (a) inventions made by employees in the performance either of an employment contract encompassing an inventive task which corresponds to their actual functions, or of studies and research expressly assigned to them, shall belong to the employer. In such case, an employee who makes such an invention shall receive supplementary remuneration which, in the absence of a determination through collective or individual negotiation, shall be fixed by the competent domestic court.
 - (b) When an employee is not required by his employment contract to engage in inventive activity, but makes an invention using the techniques and means specific to the business or company, or using data it has procured, the employer has the right to be granted the ownership or enjoyment of all or part of the rights attaching to the certificate protecting the invention of the employee. Nonetheless, the employee shall secure a fair price therefor which, failing agreement between the parties, shall be fixed by the competent domestic court. The court shall take into consideration any information that may be brought before it, in particular by the employer and the employee, to calculate a fair price, both depending on the initial contribution of each party and on the industrial and commercial utility of the invention.
 - (c) All other inventions shall belong to the employee.

- (2)**In any event, an employee who makes an invention shall immediately inform his employer, who shall acknowledge receipt of the information.
- (1)**The employee and the employer shall share all useful information on the invention in question. They shall refrain from any disclosure that may partly or wholly jeopardize the exercise of the rights conferred by this Annex.
- (2)**Any agreement between the employee and his employer pertaining to an employee invention shall, on pain of invalidity, be recorded in writing.
- (3)**In the event of the situation referred to in sub-paragraph 1(a) above, if the employer expressly waives the right to the patent, the right shall belong to the employee.
- (4)**The provisions of this article shall also apply to employees of the State, public bodies and any other legal person governed by public law. However, the amount and terms of payment of the supplementary remuneration referred to in sub-paragraph 1(a) shall be fixed by the national legislation of each Member State.
- (3)**Unless otherwise provided for in the contract, the right to the certificate of registration of a utility model made in fulfillment of an order shall belong to the client.

Article 10

Limitation of the rights conferred by the utility model

- (1)**The rights deriving from the utility model shall not encompass the following:
- (a)**acts relating to objects offered for sale in the territory of a Member State or a third-party State by the owner of the utility model or with his consent;
 - (b)**the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a Member State;
 - (c)**acts in relation to a registered utility model that are carried out for experimental purposes in the course of scientific and technical research or for educational purposes; and
 - (d)**acts performed by any person who in good faith on the filing date or, where priority is claimed, on the priority date of the application on the basis of which the utility model is registered on the territory of a Member State, was in possession of the utility model.
- (2)**The right of the possessor referred to in sub-paragraph 1(d) above may only be assigned with the goodwill, the business or company or the part of thereof to which it is attached.

PART II – FORMALITIES FOR THE REGISTRATION OF UTILITY MODELS

SECTION I – APPLICATIONS FOR THE REGISTRATION OF UTILITY MODELS

Article 11

Filing of the application

- (1)** The application for the registration of a utility model shall be filed with the Organization or the Ministry responsible for industrial property, in accordance with Article 8 of the Agreement, this Annex and the procedures set forth in the implementing regulations.
- (2)** The application file shall contain the following:
- (a)** an application addressed to the Director-General of the Organization;
 - (b)** proof of payment to the Organization of the requisite fees;
 - (c)** an unstamped, private power of attorney if the applicant is represented by an agent; and
 - (d)** a sealed envelope containing the following:
 - (i)** a specification stating by what configuration, arrangement or mechanism the utility model may be useful to the work or intended purpose, set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry out the model;
 - (ii)** the drawings and photographs necessary or useful for the understanding of the specification;
 - (iii)** a descriptive abstract summarizing the contents of the specification;
 - (iv)** the claim or claims defining the scope of the protection sought, which shall not exceed the contents of the specification referred to in sub-paragraph (i) above; and
 - (v)** sufficient indications regarding the best manner of carrying out the invention known to the inventor on the filing date and, where priority is claimed, the priority date of the application.

Article 12
Unity of the utility model

The application shall be restricted to a single principal subject, with the details that constitute it and the uses specified. It shall contain no restrictions, conditions or reservations. It shall have a title describing precisely and succinctly the purpose of the invention.

Article 13
Claim of priority

- (1)** Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for registration, or to submit to the Organization no later than six months following the filing date of his application, the following:
- (a)** a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;
 - (b)** a certified true copy of the earlier application; and
 - (c)** if he is not the person who filed the earlier application, a written authorization from the applicant or his successors in title authorizing him to avail himself of the priority in question.
- (2)** The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each right of priority claimed and shall submit proof of payment of the fee within the same six-month period mentioned above.
- (3)** Failure to present any one of the documents mentioned above within the time limit shall automatically entail loss of the benefit of the right of priority claimed for the application under consideration.
- (4)** Any document that reaches the Organization more than six months after the filing of the application for registration shall be declared inadmissible.

Article 14
Conversion of a patent application into an application for registration of a utility model and vice versa

- (1)**
- (a)** At any time prior to the grant of a patent or the rejection of his patent application, a patent applicant may, on payment of the prescribed fee, convert his application into an application for registration of a utility model, which shall be accorded the filing date of the original application.
 - (b)** At any time prior to the grant of a certificate of registration of a utility model or the rejection of his application, the applicant for the registration of a utility model may, on payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the original application.

(2)

(a) Where a patent application is converted under paragraph 1(a) above into an application for registration of a utility model, it shall be deemed to have been withdrawn and the Organization shall enter a "withdrawn" notice in the register of patents.

(b) Where an application for the registration of a utility model is converted under paragraph 1(b) above into a patent application, it shall be deemed to have been withdrawn and the Organization shall enter a "withdrawn" notice in the register of utility models

(3) An application may not be converted more than once under paragraph (1).

Article 15

Inadmissibility due to non-payment

No application for registration of a utility model shall be admissible if it is not accompanied by a document attesting payment of the application and publication fees to the Organization.

Article 16

Filing date

The Organization shall grant as the filing date the date of receipt of the application drafted in one of its working languages, provided that at the time of filing, the application contains the following:

(a) an express or implicit indication that the grant of a certificate of registration of a utility model is sought;

(b) information whereby the identity of the applicant may be established;

(c) a part which, *prima facie*, purports to be the description of an invention and one or more claims; and

(d) proof of payment of the prescribed fees.

Article 17

Publication of the application

(1) For each application for the registration of a utility model, the Organization shall publish the following information:

(a) the number of the application for the registration of a utility model;

(b) the filing date of the application;

(c) the company name and the surname, first name and address of the applicant;

(d) the name and address of the inventor, unless the inventor has requested not to be mentioned in the application for the registration of the utility model;

- (e) the name and address of the agent, if any;
 - (f) a statement of any priority or priorities, if such have been validly claimed;
 - (g) the priority date, the name of the country or countries in which the prior application was filed and the number of the prior application;
 - (h) the title of the utility model;
 - (i) the abstract of the utility model;
 - (j) the date and number of the international application; as the case may be; and
 - (k) the international patent classification symbols.
- (2) For each application for the registration of a utility model, the Organization shall also publish the specification, any claims and the drawings, if applicable.
- (3) The application for registration of a utility model shall be published within 18 months of the filing date or the priority date, save for international applications.
- (4) Paragraph (2) above shall not apply to international applications.

Article 18 **Opposition**

- (1) Any interested party may oppose the issuance of a certificate of registration of a utility model by sending to the Organization, within three months of the publication of the publication of the application mentioned in Article 17 above, a written statement setting out the reasons for his opposition, which shall be based on an infringement of the provisions of Articles 1, 2, 3, 4 and 8 of this Annex, or of a prior registered right belonging to the opposing party.
- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may submit a reasoned reply within three months, renewable once on application. The reply shall be forwarded to the opposing party or to his agent.
- (3) Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4) Where the Organization considers the opposition to be well-founded:
- (a) for certain claims, or for the reasons set forth in Articles 7 and 12, it shall re-examine the application for a utility model certificate;
 - (b) for all claims or for the grounds set forth in Articles 1 to 4, it shall terminate the examination of the application; and
 - (c) where the Organization considers the claim to be groundless, it shall continue the examination of the application for a utility model certificate.

Article 19

Claim of ownership before the organization

- (1)** Where a person not entitled to a certificate of registration of a utility model files an application for a certificate of registration of a utility model, the person entitled to the certificate of registration may claim ownership of the application before the Organization within three months of the publication of the application, submitting a written notice setting out the grounds for his claim.
- (2)** The Organization shall send a copy of the notice of claim of ownership to the applicant or his agent, who may submit a reasoned response to such notice within three months, renewable once on request. The response shall be transmitted to the claimant or his agent.
- (3)** Before ruling on the ownership claim, the Organization shall hear the parties or their agents on request.
- (4)** The decision of the Organization on the claim of ownership shall be appealable before the High Commission of Appeal within 60 days with effect from the notification of the decision to the parties concerned.
- (5)** The Organization shall only transfer the application if the above-mentioned claim is well-founded.
- (6)** The final decision on the transfer of the application shall be recorded in the Organization's special register.

Article 20

Division of the application

- (1)** Any initial application for the registration of a utility model concerning several objects may be divided into several applications, known as divisional applications:
 - (a)** at least until the decision concerning the issuance of the certificate of registration of the utility model;
 - (b)** during and proceedings for examination, opposition or claim or ownership of the application for registration of the utility model; and
 - (c)** during any appeal concerning the ruling on the claim of ownership.
- (2)** Divisional applications shall maintain the filing date of the initial application and, as the case may be, the benefit of the right of priority.
- (3)** A fee is required for all divisional applications.

SECTION II – GRANT OF CERTIFICATES OF REGISTRATION FOR UTILITY MODELS

Article 21

Examination of applications

- (1)** An examination shall be conducted for all applications for the registration of utility models to establish the following:
- (a)** the invention which is the subject of the application for the certificate of registration is not excluded from the protection granted by the utility model under the provisions of Article 4 of this Annex;
 - (b)** any claims made are consistent with article 11(2)(d)(iv) of this Annex; and
 - (c)** the provisions of Article 12 of this Annex are met.
- (2)** A research report shall also be prepared to ascertain the following:
- (a)** at the time of filing the application for the certificate of registration, an application for a certificate of registration filed previously or enjoying older priority that is validly claimed, in respect of the same invention was not in the process of being granted;
 - (b)** the invention:
 - (i)** is new; and
 - (ii)** is industrially applicable.
- (3)** For international applications under the Patent Cooperation Treaty, the Organization may rely on the provisions of Articles 20 and 36 of the Treaty relating respectively to the international search report and the international preliminary examination report.

Article 22

Grant

- (1)** Where the Organization finds that all the conditions the issuance of a certificate of registration have been met and that the report referred to in Article 21(2) above has been prepared, it shall issue the certificate of registration of the utility model. Nonetheless, the issuance of the certificate of registration of the utility model is at the sole risk of applicants and without guarantee as to the existence, novelty or merits of the invention, or as to the fidelity or accuracy of the description.
- (2)** The issuance of a certificate of registration of a utility model shall be by decision of the Director-General of the Organization or by decision of an employee of the Organization, acting under the authority of the Director-General.
- (3)** Certificates of registration based on international applications provided for by the Patent Cooperation Treaty shall be issued in the same form as those provided for in paragraph

(2) above, with the addition of a reference to the international publication provided for in the Patent Cooperation Treaty.

Article 23

Rules governing rejection

(1) Any application failing to comply with the stipulations of Article 11, save for the provision in sub-paragraph (b) thereof and the stipulations of Article 12, shall be irregular. Such irregularity shall be notified to the applicant or his agent, who shall be invited to provide the proper documents within three months of the date of notification. This time limit may be extended by 30 days in case of justified necessity, on application by the applicant or his agent.

An application that is regularized within the prescribed time limit shall maintain the date of the initial application.

(2) Where the regularized documents are not provided within the prescribed time limit, the application for a certificate of registration of a utility model shall be rejected.

(3) No application may be rejected under the terms of paragraph (2) above if the applicant or his agent has not been invited to correct the application according to the prescribed terms and procedure.

(4) Notwithstanding the provisions of paragraph (4) above, the Organization may correct obvious clerical errors contained in applications.

(5) The applicant may file an appeal with the High Commission of Appeal within 60 days of the notification of the rejection. A decision by the High Commission of Appeal shall not be appealable.

SECTION III – CERTIFICATES OF ADDITION

Article 24

Right to certificates of addition

(1) Throughout the duration of the utility model, the inventor of a utility model or the successors in title of a certificate of registration of the utility model shall have the right to make changes, improvements or additions, to the invention by meeting the formalities stipulated in Articles 11 and 13 of this Annex.

(2) Such changes, improvements or additions shall be attested by certificates issued in the same form as the main certificate of registration and shall have the same effect as the main certificate of registration as from the date of their issuance.

(3) Certificates of addition taken by any of the successors in title shall benefit all the others.

Article 25

Term of the certificate of addition

Certificates of addition shall terminate with the main certificate of registration. Nonetheless, invalidation of the main certificate of registration shall not invalidate as of right the corresponding certificate or certificates of addition and, even where absolute invalidity has been declared under the provisions of Article 34, the certificate or certificates of addition may survive the main certificate of registration until the normal term of the main certificate expires, subject to continued payment of the annual fees that would have been payable had the certificate of registration not been invalidated.

Article 26

Conversion of an application for a certificate of addition into an application for a certificate of registration of a utility model

Provided that a certificate of addition has not been granted, the applicant may effect the conversion of his application for a certificate of addition into an application for a certificate of registration of a utility model, the filing date of which shall be that of the original application.

Article 27

Formalities for conversion of an application for a certificate of addition into an application for a certificate of registration of a utility model

Any inventor who wishes to obtain a main certificate of registration of a utility model for a change, improvement or addition rather than a certificate of addition expiring with the earlier certificate of registration shall comply with the formalities laid down in Articles 11 and 13.

Article 28

Independence of the right to exploit certificates of registration of utility models relating to the same subject matter

Any person who has obtained a certificate of registration of a utility model for a creation related to the subject matter of another utility model shall have no right to exploit the creation already protected and, conversely, the owner of an earlier certificate of registration may not exploit the creation that is the subject of the new certificate of registration of a utility model.

PART III – PUBLICATION

Article 29

Publication of certificates of registration of utility models

(1) The Organization shall publish the following details for each utility model granted:

- (a)** the number of the certificate of registration of the utility model;
- (b)** the filing number of the application;
- (c)** the filing date;
- (d)** the company name, surname, first name and address of the applicant;

- (e) the name and address of the creator of the utility model, unless he has requested not to be mentioned in the certificate of registration of the utility model;
- (f) the name and address of the agent, if any;
- (g) an indication of any priorities, if such have been validly claimed;
- (h) the date of the priority, the country in which or the country or countries for which the earlier application was filed and the number of the earlier application;
- (i) the date of the grant of the certificate of registration;
- (j) the title of the utility model;
- (k) the abstract; and
- (l) the symbols of the international classification of utility models.

(2) The implementing regulations shall fix and determine the procedures for the publication of the utility model, any drawings and claims and the abstract.

Article 30

Communication of descriptions, drawings and photographs

- (1) The descriptions, drawings and photographs of registered utility models shall be kept at the Organization or, after the publication provided for in Article 29 above, communicated on request.
- (2) With effect from the publication referred to in Article 29 above, any person may obtain official copies of the above-mentioned descriptions, drawings and photographs.
- (3) Paragraphs (1) and (2) above shall apply to official copies filed by applicants that have sought to avail themselves of the priority of a previous filing and the documents entitling some of such applicants to claim such priority.
- (4) An applicant for registration who intends to avail himself of priority of his filing abroad before the registration of the utility model may obtain an official copy of his application.

PART IV – TRANSFER AND ASSIGNMENT OF RIGHTS AND CONTRACTUAL LICENSES

Article 31

Transfer and assignment of rights

- (1) The rights subsisting in an application for registration of a utility model or in an application for registration of a registered utility model shall be transferable in whole or in part.

- (2) Acts involving transfer of ownership, licensing of the right of exploitation or assignment of such right, or a pledge or cancellation of a pledge in respect of an application for registration of a utility model or a registered utility model shall, on pain of invalidity, be evidenced in writing.

Article 32

Recording of acts in the special register of utility models

- (1) The acts referred to in Article 31 above shall not be binding on third parties unless they are entered in the special register of utility models kept by the Organization and published in the Official Bulletin of Industrial Property. A copy of such acts shall be kept by the Organization.
- (2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the special register of utility models, and also a record of the entries concerning utility models that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 33

Exploitation as of right of the utility model and its improvements

- (1) Persons who have obtained from the owner of a certificate of registration of a utility model or from entitled persons the right to exploit the utility model shall benefit as of right from improvements made by the owner of the utility model or by the persons entitled to the model. Conversely, the owner or entitled persons shall benefit from improvements subsequently made to the utility model by persons who have obtained the right to exploit the model.
- (2) Any person entitled to benefit from the improvements mentioned in paragraph (1) above may provide the Organization with a copy of the document attesting the entitlement.

Article 34

License contract

- (1) The owner of a certificate of registration of a utility model may, by contract, grant to a natural person or legal entity a license enabling him to exploit the registered utility model.
- (2) The validity of the license may not be longer than that of the utility model.
- (3) The license contract shall be prepared in writing and signed by the parties.
- (4) The license contract shall be entered in the special register of utility models. It shall not be binding on third parties until it is entered in the register and published in the format specified in the implementing regulations relating to this Annex.
- (5) The license shall be removed from the register at the request of the owner of the certificate of registration of the utility model or the licensee on presentation of proof of the expiry or termination of the license contract.

(6) Unless otherwise provided in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or from exploiting the registered utility model himself.

(7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from working the registered utility model himself.

Article 35
Invalid clauses

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they constitute anti-competitive practices and, in general, impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the certificate of registration of the utility model or not necessary for the upholding of such rights.

(2) The following shall not be considered restrictions within the meaning of paragraph (1) above:

(a) restrictions relating to the extent, the scope or the duration of exploitation of the certificate of registration of the registered utility model;

(b) the obligation on the licensee to abstain from any act liable to impair the validity of the registered utility model.

(3) Unless otherwise stipulated in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 36
Ascertainment of invalid clauses

A civil court may ascertain the invalid clauses referred to in Article 35 above at the request of any person.

PART V – NON-VOLUNTARY LICENSES

Article 37
Non-voluntary license for non-working

(1) At the request of any person made after four years with effect from the filing date of the application for the utility model certificate, or three years with effect from the date of the issuance of a certificate, whichever period expires later, a non-voluntary license may be granted where one or more of the following conditions are met:

(a) the utility model is not being worked on the territory of a Member State at the time the request is made;

(b) the working of the utility model on such territory does not meet the demand for the protected product on reasonable terms; or

(c) on account of the refusal of the holder of the certificate of registration to grant licenses on reasonable commercial terms and procedures, the establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may not be granted if the holder of the certificate of registration provides legitimate reasons for the non-working.

Article 38

Non-voluntary license for a dependent certificate of registration

Where an invention protected by a certificate of registration of a utility model cannot be worked without infringing the rights under an earlier certificate of registration whose owner refuses to authorize its use on reasonable commercial terms and procedures, the owner of the later certificate of registration may obtain a non-voluntary license for such use from the competent domestic court on the same terms as those that apply to non-voluntary licenses granted for non-working, and on the following additional conditions:

(a) the invention claimed in the later certificate of registration represents substantial technical progress, of considerable economic interest, in relation to the invention claimed in the earlier certificate of registration;

(b) the owner of the earlier certificate of registration has the right to a reciprocal license on reasonable terms for the use of the invention claimed in the later certificate of registration; and

(c) the use authorized in relation to the earlier certificate of registration shall be unassignable save where the later certificate of registration is also assigned.

Article 39

Request for the grant of a non-voluntary license

(1) The application for the grant of a non-voluntary license shall be made to the competent domestic court of the domicile of the owner of the certificate of registration or, if he is domiciled abroad, to the civil court of either his elected domicile or the place in which he has named an agent for the purposes of filing. Only applications made by persons domiciled on the territory of a Member State shall be considered.

The owner of the certificate of registration or his agent shall be informed thereof without delay.

(2) The application shall contain the following:

(a) the name and address of the requester;

(b) the title of the certificate of registration and the number of the certificate of registration in respect of which a non-voluntary license is requested;

(c) evidence that the working of the registered utility model on the above-mentioned territory does not meet demand for the protected product on reasonable terms; and

(d) in the case of a non-voluntary license requested under Articles 37 and 38 above, a statement by the requester in which he undertakes to work the registered utility model on the territory of one of the Member States in such a way as to meet the needs of the market.

(3) The request shall be accompanied by the following:

(a) proof that the requester has previously approached the owner of the certificate of registration, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him subject to reasonable commercial terms and procedures and within a reasonable time;

(b) in the case of a non-voluntary license requested under Article 37 or 38, proof that the requester is capable of working the registered model.

Article 40

Grant of non-voluntary license

(1) The competent domestic court shall consider whether the application for the grant of a non-voluntary license satisfies the requirements of Article 39 above. If the application does not satisfy those requirements, the court shall reject it. Before rejecting the application, the court shall inform the applicant of the defects in his request and shall allow him to make the necessary corrections.

(2) Where the application for the grant of a non-voluntary license satisfies the requirements of Article 39 above, the competent domestic court shall notify it to the owner of the certificate of registration concerned and to any licensee of the invention, and shall invite them to submit their written observations on the application within three months. The observations shall be communicated to the applicant. The court shall likewise notify the application to any government authorities concerned. The court shall hold a hearing on the application and the observations received to which the applicant, the owner of the certificate of registration, any licensee referred to above and any government authorities concerned shall be invited.

(3) Once the procedure prescribed in paragraph (2) above has been completed, the competent domestic court shall take a decision on the application, either granting or refusing the non-voluntary license.

(4) If the non-voluntary license is granted, the decision of the competent domestic court shall stipulate the following:

(a) the scope of the license, specifying in particular the acts referred to in Article 5 of this Annex to which it extends and the period for which it is

granted, it being understood that a non-voluntary license granted under Article 37 or 38 above may not include the act of importation;

- (b) the amount of the remuneration to be paid by the licensee to the owner of the certificate of registration; failing agreement between the parties, such remuneration shall be equitable, due regard being had to all the circumstances of the case.

The remuneration may be subject to judicial revision on application by the beneficiary of the non-voluntary license or the owner of the certificate of registration.

- (5) The decision of the competent domestic court shall be reasoned. The final decision shall be transmitted to the Organization by the most diligent party.
- (6) The Organization shall enter the decision in the special register and shall notify it to any licensee whose name appears in the special register.

Article 41

Rights and obligations of the holder of a non-voluntary license

- (1) After the expiry of the time limit for appeal specified in Article 44 of this Annex, or once an appeal decision has been handed down that wholly or partly upholds the decision by which the competent domestic court granted the non-voluntary license, the grant of the license shall authorize the licensee to exploit the invention protected by the utility model according to the terms laid down in the decision of the competent domestic court or in the appeal decision, and shall require him to pay the remuneration specified in the said decisions.
- (2) The grant of a non-voluntary license shall not affect either license contracts in force or non-voluntary licenses in force and shall not preclude the conclusion of other license contracts or the grant of other non-voluntary licenses.

However, the owner of the certificate of registration may not grant to other licensees more favorable terms than those of the non-voluntary license.

Article 42

Limitation of the non-voluntary license

- (1) The beneficiary of the non-voluntary license may not, without the consent of the owner of the certificate of registration, grant any third party permission to perform any of the acts that he is authorized to perform under the non-voluntary license.
- (2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may be transferred together with the goodwill, the business or establishment working the invention for which a certificate of registration has been issued. No such transfer shall be valid without the authorization of the competent domestic court. Before granting the authorization, the court shall afford the owner of the certificate of registration the opportunity to submit his views. It shall notify the authorization to the Organization,

which shall register and publish it. Following any transfer so authorized, the new beneficiary of the non-voluntary license shall accept the same obligations as those that were incumbent on the former beneficiary.

Article 43

Amendment and withdrawal of the non-voluntary license

- (1)** On application by the owner of the certificate of registration or the beneficiary of the non-voluntary license, the competent domestic court may amend the decision on the grant of the non-voluntary license where new facts justify such amendment.
- (2)** On application by the owner of the certificate of registration, the competent domestic court may withdraw the non-voluntary license:
 - (a)** if the grounds for its grant have ceased to exist;
 - (b)** if the beneficiary fails to comply with the scope defined in accordance with Article 40(4)(a) above; and
 - (c)** if the beneficiary is in arrears with the payment of the compensation referred to in Article 40 above.

In the cases provided for in sub-paragraphs (a) and (b) above, withdrawal may be sought by the other licensees.

- (3)** Where the non-voluntary license is withdrawn under paragraph (2)(a) above, the beneficiary of the non-voluntary license shall be allowed a reasonable period within which to cease working the invention where immediate cessation would have serious adverse consequences for him.
- (4)** The provisions of Articles 39 and 40 of this Annex shall apply to the amendment or withdrawal of the non-voluntary license.

Article 44

Appeals

- (1)** Within one month of the publication specified in Articles 40(6), the owner of the certificate of registration of the utility model, the beneficiary of a license for the invention or any person who has sought the grant of a non-voluntary license may lodge an appeal with the competent higher court against a decision taken under Articles 40(3), 42(2) or 43 above.
- (2)** The appeal referred to in paragraph (1) above contesting the grant of a non-voluntary license, the authorization to transfer a non-voluntary license or the amendment or withdrawal of a non-voluntary license shall have suspensive effect.
- (3)** The decision on appeal shall be notified to the Organization, which shall enter it into the special register and publish it.

Article 45

Defense of rights granted

- (1)** Any beneficiary of a contractual or non-voluntary license may request the owner of a certificate of registration by registered letter to bring the necessary judicial action for civil or criminal penalties for any violation, mentioned by the said beneficiary, of the rights under the certificate of registration.
- (2)** If, within three months of the request provided for in paragraph (1) above, the owner of the certificate of registration refuses or fails to institute the action referred to in the preceding paragraph, the beneficiary of a license that has been registered may institute the action in his own name, without prejudice to the owner's right to intervene in the action.

Article 46

Cessation of the obligations of the beneficiary of the non-voluntary license

Any action seeking invalidation of the certificate of registration shall be directed against the owner of the certificate. If a final judicial decision declares the certificate of registration invalid, the beneficiary of the non-voluntary license shall be discharged from all obligations resulting from the decision granting him the non-voluntary license.

Article 47

Non-voluntary licenses in the national interest

- (1)** Where a certificate of registration for a utility model is vital to the national economy, public health or national defense, or where its non-working or insufficient working has severe adverse effects on meeting the country's needs, it may be subjected to a non-voluntary license by an administrative order of the competent Minister of the Member State concerned.

Such act shall determine, on negotiation between the interested parties, the government or the beneficiary body as to the duration and scope, in particular acts of working, including importation, the quantities of products, the territory or the region to be covered by the non-voluntary license and the amount of the fees.

Non-voluntary licenses for health needs shall be subject to the same conditions as those fixed in Article 37(1) of this Annex.

Where the license is intended to remedy an anti-competitive practice or in case of emergency, the Ministry shall not be required to seek an amicable agreement.

- (2)** Failing agreement between the owner of the utility model and the Ministry concerned in regard to the duration and scope of the non-voluntary license and the amount of the fees, such shall be fixed by the competent Minister of the Member State on his own authority. However, they may be reviewed on application of the most diligent party.

Article 48
Licenses as of right

- (1) Subject to compliance with the clauses of a previously registered license, the owner of a certificate of registration of a utility model may request the Organization to enter into the register in respect of his certificate of registration of a utility model the indication "*license as of right*". Such indication shall then be entered in the special register of utility models and immediately published by the Organization.
- (2) This indication in the register enables anyone to obtain a license to exploit the said certificate of registration under conditions which, failing agreement between the interested parties, shall be fixed by the competent domestic court. Furthermore, it shall entail a reduction of the annual fee.
- (3) The owner of the certificate of registration may at any time request the Organization to remove the "*license as of right*" indication. If no license is extant, or by unanimous consent of all the beneficiaries of the license, the Organization shall remove the indication, on payment of the annual fees that should have been paid if this indication had not been made in the register.
- (4) The provisions of Article 24(1) of this Annex shall also apply to licenses as of right.
- (5) The beneficiary of a license as of right may not assign it or grant subsidiary licenses by virtue of the license as of right.

PART VI – INVALIDITY, CANCELLATION AND RELATED ACTIONS

SECTION 1 – INVALIDITY AND CANCELLATION

Article 49
Invalidity

- (1) Utility models registered in the following cases shall be declared invalid:
- (a) having regard to the provisions of Article 2 and 3 of this Annex, the utility model is not new, does not involve an inventive step or is not capable of industrial application;
 - (b) the utility model is not, within the meaning of Article 4 above, registrable without prejudice to the penalties that might be incurred for the manufacture or marketing of prohibited articles;
 - (c) the specification attached to the utility model does not conform to the stipulations of Article 11(2)(d)(i) above, or does not state completely and truthfully the true methods of the applicant.
- (2) Certificates in respect of improvements that are not connected with the utility model, as provided for in this Annex, shall likewise be declared invalid.

(3)Invalidity may relate to all or only some of the claims.

Article 50

Forfeiture

- (1)** Any owner of a certificate of registration for a utility model who has not paid his annual fees on the anniversary date of the filing of his application shall forfeit all his rights.
- (2)** However, the owner shall be allowed a six-month period of grace within which he may still validly pay the annual fees. In such case, he shall also pay an additional fee.
- (3)** Payments made to supplement annual or additional fees during the six-month period mentioned above shall be considered valid.
- (4)** Payments made as annual or additional fees payable for an application for the registration of a utility model resulting from the conversion of an application for the registration of a utility model under Article 14 above shall also be considered valid provided that the payments are made within six months of the date of the application for conversion.

Article 51

Restoration

- (1)** Without prejudice to the provisions of Articles 49 and 50 above, where the protection conferred by the registered utility model is not renewed owing to circumstances beyond the control of the owner, the owner or entitled persons may apply for its restoration, on payment of the requisite annual fee and of a surcharge whose amount shall be fixed by regulation, within six months of the date on which the said circumstances ceased to exist and no later than within two years from when the payment of the annual fee was due.
- (2)** The application for restoration of the utility model, together with documents proving payment of the fee and surcharge mentioned in the paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.
- (3)** The Organization shall consider such grounds and shall either restore the utility model or reject the application if it does not find the grounds to be well-founded.
- (4)** Restoration shall not entail the extension of the maximum duration of the utility model.
- (5)** The rejection decision following the application for restoration shall be appealable before the High Commission of Appeal within 60 days of its notification.
- (6)** Restored utility models shall be published by the Organization in the format prescribed by the implementing regulations relating to this Annex.
- (7)** Paragraphs (1) to (6) shall apply where the application for the registration of a utility model was not filed within the time limit prescribed by international agreements.

SECTION II – ACTIONS SEEKING INVALIDITY OR FORFEITURE

Article 52 Prosecution

- (1) Actions seeking invalidity or forfeiture may be brought by any person with standing.
- (2) In any action seeking the invalidity or forfeiture of a utility model, the Office of the Public Prosecutor may be an intervening party and make submissions seeking a declaration of absolute invalidity or forfeiture of the utility model.
- (3) It may even directly enter a principal suit seeking a declaration of invalidity in the cases provided for in Article 49(1).
- (4) In the cases provided for in the paragraph (3) above, all persons entitled to rights in the utility model whose acts have been entered in the special register of utility models of the Organization under Article 32 above shall be respondents in the proceedings.

Article 53 Competent court

- (1) The action referred to in Article 52 above and all disputes relating to the ownership of utility models shall be brought before the competent domestic courts.
- (2) If action is simultaneously brought against the owner of the certificate of registration of the utility model and one or more limited licensees of the utility model, it shall be brought before the court sitting in the established or elected domicile of the owner.
- (3) The matter shall be investigated and determined in the manner prescribed for summary proceedings. If necessary, it shall be transmitted to the Office of the Public Prosecutor.

Article 54

Recording of the judicial decision on invalidity or forfeiture

Where the absolute invalidity or forfeiture of a utility model has been pronounced by a court decision that has become *res judicata*, the competent court shall so inform the Organization and the invalidity or forfeiture pronounced on the territory of a Member State shall be entered in the special register of utility models and published in the format specified in Article 29 above for granted utility models.

PART VII – COUNTERFEITING, PROCEEDINGS AND PENALTIES

Article 55 Counterfeiting

- (1) The offense of counterfeiting shall be any violation of the rights of the owner of a registered utility model, as defined in Article 5 of this Annex, in particular by manufacture of products, use of means forming the subject matter of the utility model, sale of stolen goods, sale or offering for sale or introduction into the territory of one of the Member States of one or more objects.

(2)Counterfeiting incurs the civil and criminal liability of the perpetrator.

(3)On application by the owner of the certificate of registration of the utility model or by the licensee, where the licensee has invited the owner to institute legal proceedings and the owner has declined or neglected to do so, the competent domestic court may issue an injunction to stop the counterfeiting or prevent imminent counterfeiting or the commission of an act of unfair competition as envisaged in Annex VIII, and may award damages and any other compensation provided for in national legislation.

The owner of the certificate of registration of the utility model may be a party in the proceedings instituted by the licensee in accordance with paragraph (3) above.

Any holder of a license may be a party in the proceedings instituted by the owner of the certificate of registration to seek compensation for any prejudice he has suffered.

Article 56

Acts prior to registration

Acts occurring prior to the registration of a utility model shall not be considered prejudicial to the rights of the owner of the utility model and may not be invoked to justify conviction, even in civil proceedings, save for acts subsequent to the communication to the alleged counterfeiter of an official copy of the description of the invention attached to the application for registration of the utility model.

Article 57

Prevention of infringement

(1)Any person with the standing to bring action for counterfeiting may make an urgent application to the competent domestic court seeking, if necessary under financial compulsion, an order against the alleged counterfeiter or the intermediaries whose services he uses, for the purpose of instituting any measure intended to prevent an imminent infringement of the rights conferred by the certificate or to prevent the continuation of the alleged counterfeiting.

(2) The competent domestic court may also order all urgent measures on application where the circumstance require that such measures should not be taken *inter partes*, in particular where any delay is likely to cause irreparable harm to the applicant. If sought through an urgent or *ex parte* application, the court may only order the measures sought if the evidence, reasonably accessible to the applicant, makes it likely that his rights are being infringed or that such infringement is imminent.

(3)The competent domestic court may prohibit the continuation of the alleged acts of counterfeiting, subject them to guarantees intended to secure the compensation of the applicant, if warranted, or order the seizure or transfer to a third party of the products suspected of infringing the rights conferred by the certificate, to prevent introduction or circulation of the products in commercial circuits.

(4)Where the measures taken to stop an infringement of rights are ordered prior to proceedings on the merits, the applicant must file an application, either before a civil or

criminal court, within 10 days with effect from the day following the day on which the measure is implemented. Otherwise, at the request of the defendant, who is not required to provide reasons for his application, the measures ordered shall be cancelled, without prejudice to any damages that may be claimed.

Article 58

Seizure for counterfeiting

- (1)** Owners of a certificate of registration of a utility model or an exclusive right to work it may, with a view to securing an order from the presiding judge of the competent domestic court within whose jurisdiction the operations must be conducted, approach a bailiff, public officer or judicial officer, including customs officers, to furnish a detailed inventory, with or without seizure, of the objects claimed to be counterfeit.
- (2)** The order shall be made on application and on presentation of the certificate of registration of the utility model.
- (3)** Where seizure is sought, the judge may require the applicant to make a security deposit which he must provide before the seizure is effected. The deposit shall be adequate without deterring applicants from availing themselves of the procedure.
- (4)** The security deposit shall always be required of foreigners seeking a seizure.
- (5)** The person in possession of the objects identified or seized shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff, public officer or judicial officer or the customs official, as the case may be.

Article 59

Time limit for initiating proceedings on the merits

Should the petitioner fail to institute criminal or legal proceedings within 10 days of the seizure or inventory, such seizure or inventory shall *ipso jure* be void, without prejudice to any damages that may be claimed.

Article 60

Search for information

- (1)** If so requested, the competent domestic court may make an order, if necessary under financial compulsion, for the purposes of determining the origin and distribution networks of the counterfeit products or processes that are violative of the applicant's rights, the disclosure of all documentation or information held by the defendant or by any person found in possession of counterfeit products or found to be applying counterfeit processes or providing services used in counterfeiting or reported as being involved in the production, manufacture or distribution of such products, the application of such processes or the provision of such services.
- (2)** The documents or information sought shall concern the following:

- (a) names and address of producers, manufacturers, distributors, suppliers and other persons previously in possession of products, processes or services, together with wholesalers and retailers; and
- (b) the quantities produced, sold, delivered, received or ordered, together with the price for which the said products, processes or services were sold.

Article 61

Determination of damages

The court seized of the matter shall determine the amount of the damages, having regard to the adverse financial effects, including loss of earnings, suffered by the prejudiced party, the profit made by the counterfeiter and the moral damage caused to the title owner as a result of the infringement.

Article 62

Border measures

- (1) On written application by any of the persons referred to in Article 34, supported by documentary proof of his right, the customs administration may detain any goods its suspects to be counterfeit when conducting controls.
- (2) The public prosecutor, the applicant and the importer of the goods shall be immediately informed by the customs services of such detention.
- (3) The detention measure shall be lifted *ipso jure* within 10 working days of the notification of the detention of the goods if the applicant fails to provide proof to the customs services:
 - (a) of the interim measures; or
 - (b) of his application to the competent domestic court in either civil or criminal matters and his provision, where applicable, of the requisite guarantees to cover any responsibility he may incur where the alleged counterfeiting is not ultimately found to exist.
- (4) For the purposes of taking the legal action referred to in the paragraph (3) above, the applicant may request communication by the customs administration of the names and addresses of the sender, importer, intended recipient and quantity of the detained good, notwithstanding provisions governing professional secrecy binding on customs officials.
- (5) Customs authorities may *proprio motu* decide to detain good where they have *prima facie* evidence that the goods infringe the rights of the owner of the certificate of registration of a utility model. Customs authorities may at any time request from the owner of the right any information that might be helpful in the exercise of their powers.
- (6) The owner of the right, the importer or the exporter shall immediately be informed of the detention.

(7) The liability of the customs authorities may be incurred in the event of unjustified detention, save where they acted in good faith.

(8) On expiry of the 10-day time limit mentioned in paragraph (3) above, where the decision to suspend the free movement of goods is not taken by a judicial authority or by an independent administration, the owner, the importer or the intended recipient of the goods may, on payment of a security deposit, cause the suspension of the detention order.

Article 63

Penalties for counterfeiting

The offense of counterfeiting shall be punishable by imprisonment of one to three years and a fine of 3,000,000 to 15,000,000 CFA francs or one of these penalties alone, without prejudice to civil damages.

Article 64

Aggravating circumstances

(1) In the event of recidivism or aggravating circumstances, the penalties stipulated in Article 63 shall be doubled.

(2) Recidivism occurs where, within the two previous years, an offender has been convicted of one of the offenses provided for in this Annex.

(3) The penalties provided for in Article 63 above shall be doubled if the counterfeiter is a person who has worked or has been employed in the workshops or establishment of the owner of the utility model or if the counterfeiter had been in association with a worker of the owner of the utility model and thereby had knowledge of the processes described in the utility model.

(4) In the latter case, the worker or employee may be prosecuted as an accomplice.

Article 65

Mitigating circumstances

The provisions of legislation in Member States regarding mitigating circumstances shall apply to offenses provided for in this Annex.

Article 66

Requirements for the initiation of criminal proceedings

Criminal proceedings may be instituted concurrently by the Public Prosecutor's Office and the prejudiced party.

Article 67

Power of the criminal court to rule on challenges

When seized of a case for counterfeiting, the competent domestic court in criminal matters shall rule on any challenges brought by the defendant, either as to invalidity or expiry of the utility model, or as to matters relating to the ownership of the utility model.

Article 68

Additional penalties

- (1)** Persons convicted of counterfeiting may further be ordered, to their cost, to withdraw from commercial circuits the objects found to be counterfeit and any item that was used or intended to commit the counterfeiting.
- (2)** The competent domestic court may order their destruction to the cost of the convicted party, without prejudice to any damages.
- (3)** The court may also order any appropriate measures to publicize the verdict, in particular its posting or publication in whole or as excerpts in the newspapers or on the online public communication services it designates, according to its procedure.
- (4)** The measures provided for in the preceding three paragraphs shall be instituted at the counterfeiter's cost.

Article 69

Usurpation

Any person who, by means of signs, advertisement, brochures, posters, marks or stamps improperly avails himself of the status of owner of a utility model without being in possession of a certificate of registration of a utility model issued in accordance with this Agreement and its implementing regulations shall be punishable by a fine of 1,000,000 to 3,000,000 CFA francs without prejudice to civil damages. In the event of recidivism, the fine shall be doubled.

Article 70

Limitation of time

The civil and criminal action provided for under this part shall be time-bound by three years with effect from the acts which triggered it.

PART VIII – TRANSITIONAL AND FINAL PROVISIONS

Article 71

Acquired rights

- (1)** This Annex shall apply to applications for utility models filed as from the date of its entry into force, subject to the rights acquired under Annex II of the Bangui Agreement, Act of February 24, 1999.
- (2)** Applications for utility models filed before the date of entry into force of this Annex shall remain subject to the rules that were applicable at the time of filing.
- (3)** Nonetheless, the exercise of rights arising from utility models granted in accordance with paragraph (2) above shall be subject to the provisions of this Annex, with effect from the date of its entry into force, subject to acquired rights, which shall be maintained.
- (4)** Annex II of the Bangui Agreement, Act of February 24, 1999 is repealed.

ANNEX III
TRADE MARKS AND SERVICE MARKS

PART I – GENERAL PROVISIONS

Article 1

Optional character of the mark

Trademarks or service marks shall be optional. However, Member States may exceptionally declare them compulsory for the goods or services that they shall specify.

Article 2

Signs recognized as marks

(1) Any visible or audible sign used or intended to be used and capable of distinguishing the goods or services of any natural or legal person shall be considered a trademark or service mark.

The following in particular may constitute such a sign:

- (a)** denominations in all forms such as words, combinations of words, surnames in and of themselves or in a distinctive form, special, arbitrary or fanciful designations, letters, abbreviations and numerals;
- (b)** figurative signs such as drawings, labels, seals, selvedges, reliefs, holograms, logos, synthesized images; shapes, especially those of the product or its packaging or those characteristic of the service, and arrangements, combinations and shades of colors;
- (c)** audible signs such as sounds and musical phrases;
- (d)** audiovisual signs; and
- (e)** series of signs.

(2) A collective mark shall consist of the mark of products or services whose conditions of use are laid down in rules approved by the competent authority and which may be used only by public enterprises, unions or groups of unions, associations, groups of producers, manufacturers, craftsmen or tradesmen, provided they are officially recognized and have legal personality.

(3) A collective certification mark shall be a mark that is applied to a product or service which by nature possesses the properties, qualities or characteristics specified in its regulations.

Article 3

Marks not eligible for registration

A mark may not be validly registered if:

- (a)** it is not distinctive, in particular because it is composed of signs or matter constituting the necessary or genetic designation of the product or its composition;

- (b) it is identical to a mark that belongs to another owner and is already registered, or to a mark whose filing or priority date is earlier and which relates to the same or similar goods or services, or it so resembles such a mark that it is liable to mislead or confuse;
- (c) it is contrary to public policy, morality or the law;
- (d) it is liable to mislead the public or business circles, in particular as to the geographical origin, nature or characteristics of the goods or services in question;
- (e) it reproduces, imitates or incorporates armorial bearings, flags or other emblems, the abbreviated name or acronym or an official sign or hallmark indicating control and warranty of a State or intergovernmental organization established by an international convention, save where the competent authority of that State or organization has granted its permission.

Article 4

Right to the mark

- (1). Subject to the following provisions, ownership of a mark belongs to the person who first deposited it. A mark may be acquired in joint ownership.
- (2). No person may claim exclusive ownership of a mark by performing the acts specified in the provisions of this Annex unless he has filed it for registration in accordance with the conditions prescribed in Article 9 below.

Article 5

Well-known marks

The owner of a well-known mark within the meaning of Article 6*bis* of the Paris Convention for the Protection of Industrial Property and Article 16 (2) and 16(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights may apply to the competent domestic court for the invalidation, on the territory of a Member State, of the effects of the filing of a mark liable to be confused with his own. Such action may not be taken more than five years following the date of the application in so far as the application was filed in good faith.

Article 6

Rights conferred by registration

- (1). Registration of a mark confers on its owner a right of ownership of the mark for the goods and services he has designated.
- (2). The following shall be prohibited unless authorized by the owner:
 - (a) the reproduction, use or affixing of a mark, even with the addition of words such as "formula, manner, system, imitation, type, method" and the use of a reproduced mark for goods or services that are identical to those designated in the registration;

- (b)** the suppression or modification of a properly affixed mark;
- (3).** The following shall be prohibited, unless authorized by the owner, if they are liable to create confusion in public perception:
 - (a)** the reproduction, use or affixing of a mark and the use of a reproduced mark for goods or services that are similar to those designated in the registration;
 - (b)** the imitation of a mark and the use of an imitated mark for goods or services that are identical or similar to those designated in the registration.

Article 7

Limitation to rights

- (1).** The registered mark does not confer on its owner the right to prohibit third parties from the use in good faith of his name, address, a pseudonym, a geographical name or accurate indications as to the type, quality, quantity, destination, value, place of origin or period of production of their products or the presentation of their services, provided such use is limited to the purposes of identification or information and cannot mislead the public regarding the provenance of goods or services.
- (2).** Registration of a mark does not confer on its owner the right to prohibit third parties from the use of the mark in relation to goods lawfully sold under the mark on the territory of a Member State or of a third-party State, provided the goods are completely unchanged.

Article 8

Joint ownership of marks

Unless otherwise provided for, joint ownership of marks shall be governed by the following provisions:

- (a)** Each of the joint owners may use the mark to his benefit, provided he makes fair compensation to the other joint owners who are not personally using the mark or who have not granted licenses for the mark. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.
- (b)** Each of the joint owners may institute proceedings for counterfeit to his exclusive benefit. The joint owner who institutes such proceedings shall notify the other joint owners of the action. Any ruling on the action shall be held in abeyance until proof of such notification is provided.
- (c)** Each of the joint owners may grant to a third party a non-exclusive license to his benefit, provided he makes fair compensation to the other joint owners who do not personally use the mark or who have not granted licenses for the mark. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.

However, the draft license agreement shall be notified to the other joint owners, together with an offer to assign the share at a specific price.

Within three months of such notification, any of the joint owners may oppose the granting of the license, provided he acquires the share of the person who wishes to grant the license.

Failing agreement within the time limit specified in the preceding subparagraph, the price shall be fixed by the competent domestic court. The parties shall have one month as from the notification of the judgement either at first instance or on appeal to relinquish the grant of the license or the purchase of the jointly owned share without prejudice to any possible damages owed; costs shall be borne by the relinquishing party.

(d) An exclusive license may only be granted with the agreement of all the joint owners or by the leave of the competent domestic court.

(e) Each joint owner may, at any time, assign his share. Joint owners shall enjoy a right of first refusal within three months of the notification of the intent to assign. Failing agreement as to the price, such price shall be fixed by the competent domestic court. Parties shall have three months with effect of the notification of the judicial decision or, in the event of an appeal, to waive the sale or purchase of the jointly owned share, without prejudice to any possible damages owed; costs shall be borne by the waiving party.

(f) A joint owner of a mark may notify the other joint owners that he is relinquishing his share to their benefit. With effect from the entering of this relinquishment in the special registry of marks or, with effect from its notification to the Organization, the joint owner in question shall be relieved of all obligations in respect of the other joint owners, who shall distribute the relinquished share in proportion to their rights in the joint ownership, unless otherwise agreed.

PART II – FILING, REGISTRATION AND PUBLICATION

Article 9

Filing of the application

(1) The application for registration shall be filed with the Organization or with the Ministry responsible for industrial property in accordance with Article 8 of the Agreement, this Annex and the procedures set forth in the implementing regulations.

(2) The application file shall contain the following:

(a) an application addressed to the Director-General of the Organization;

(b) a document proving payment to the Organization of the requisite fees;

- (c) a reproduction of the mark, including a clear and exhaustive list of the goods or services to which the mark applies, with the corresponding classes of the International Classification of Goods and Services for the Purposes of the Registration of Marks as defined in the Nice Agreement;
- (d) the regulations fixing the conditions of use, in case of a collective mark or a collective certification mark;
- (e) the priority document, if applicable; and
- (f) an unstamped private power of attorney, if the applicant is represented by an agent.

Article 10

Scope of registration

A mark may be registered for one or more classes of goods and/or services as set forth in the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Article 11

Report of filing and transmittal of documents

- (1) A report prepared by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.
- (2) A copy of the report shall be issued to the applicant.
- (3) The Ministry responsible for industrial property shall transmit the documents to the Organization within five working days of the filing date.

Article 12

Claim of priority

- (1) Any person wishing to avail himself of the priority of an earlier application shall be required to file his application for registration with the Organization within six months of the previous filing date.
- (2) Within three months of filing the application, the applicant shall attach to his application for registration, or provide to the Organization, the following documents:
 - (a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant; and
 - (b) a certified true copy of the earlier application.
- (3) An applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of

them; he shall also pay a fee for each right of priority claimed and shall submit proof of payment of the fee within the three-month period mentioned in paragraph (2) above.

- (4)** Any priority claim or priority documents that reach the Organization more than three months after the filing of the application shall entail a loss of the priority right.
- (5)** However, the priority right referred to in paragraph (4) above may be reinstated.
- (6)** The decision to refuse the application for restoration shall be appealable before the High Commission of Appeal within 60 days of notification of the decision.

Article 13

Conditions of admissibility and filing date

- (1)** The Organization shall grant as the filing date the date of receipt of the application for registration provided that, at the time of receipt, the application contains the following:
 - (a)** information allowing the identity of the applicant to be established;
 - (b)** express or explicit information on whose basis the registration of the mark is sought;
 - (c)** the reproduction of the mark and the goods or services to which it applies;
 - (d)** information concerning payment of the filing fee; and
 - (e)** a statement as to whether an agent has been appointed and the agent's name and address, if applicable.
- (2)** Any application for which the requisite fees are not paid within one month of filing shall be considered to have been withdrawn.

Article 14

Publication of the application

The Organization shall publish the following information for each application for the registration of a mark:

- (a)** the filing number;
- (b)** the filing date;
- (c)** the reproduction of the mark;
- (d)** the goods and/or services to which the mark applies, together with their classification;
- (e)** the company name and the surname, first name and address of the applicant;

(f) any priority or priorities claimed; and

(g) the name and address of the agent, as the case may be.

Article 15

Opposition

- (1) Within three months of publication of the application referred to in Article 14 above, any person may oppose the registration of a mark by submitting a written statement to the Organization setting out the reasons for the opposition. The reasons must be based on an infringement of the provisions of Articles 2 and 3 of this Annex, or of a prior registered right belonging to the opposing party. The opposition may also be based on a prior application or on a filing enjoying an earlier priority date.
- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may submit a reasoned reply within three months, renewable once on application. The reply shall be transmitted to the opposing party or his agent.
- (3) Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4) The Organization's ruling on the opposition shall be appealable before the High Commission of Appeal for 60 days as from the notification of the ruling to the parties.
- (5) The Organization shall only refuse the application for registration if the opposition is well-founded.
- (6) The final decision on forfeiture shall be published in the Official Bulletin of the Organization.

Article 16

Claim of ownership before the Organization

- (1) Where a mark has been filed by a person who at the time of filing knew, or should have known, that another person had a prior right to use the said mark, the other person may file a claim of ownership of the mark with the Organization, provided that he does so within three months following the publication of the record of the first filing.
- (2) The Organization shall send a copy of the notice of claim of ownership to the applicant or his agent, who may submit a reasoned response within three months, renewable once on application. Such response shall be transmitted to the claimant or his agent.
- (3) Before ruling on the claim of ownership, the Organization shall hear the parties or their agents on request.
- (4) The Organization's ruling on the claim of ownership shall be appealable before the High Commission of Appeal within 60 days of the notification of the decision to the parties.
- (5) The Organization shall not transmit the application for registration to the claimant unless the aforementioned claim of ownership is well-founded.

(6)The final ruling on the transmittal of the application shall be recorded in the special register of the Organization.

Article 17

Division of the application

(1)Any initial application concerning several goods or services may be divided by the applicant or at his request into several applications, called divisional applications:

(a)at least until the decision on the registration of the mark;

(b)during any proceedings for opposition or claim of ownership of the mark; or

(c)during any appellate process concerning the decision on the opposition or the claim of ownership.

(2)The division of the initial application may only concern the list of products and services covered by the application.

(3)Divisional applications shall retain the filing date of the initial application and, where applicable, the benefit of the right of priority.

(4)A fee shall be payable for all divisional applications.

Article 18

Examination and registration of the mark

(1)For every application for registration of a mark, the Organization shall examine whether the formal conditions, referred to in Article 9 of this Annex, have been met and whether the requisite fees have been paid.

(2)Any filing that does not meet the requirements of Article 3(a), (c), (d) and (e) shall be rejected.

(3)Any application, in respect of which the formal conditions referred to in Article 9, with the exception of paragraph (1)(b), and in Article 12 have not been observed, shall be irregular. Such irregularity shall be notified to the applicant or his agent, who shall be invited to regularize the documents within three months of the date of notification. The time limit may be extended by 30 days, in a case of proven necessity, at the request of the applicant or his agent. An application thus regularized within the prescribed period shall retain the date of the original application.

(4)Where regularized documents are not produced within the prescribed time limit, the application for registration of the mark shall be rejected.

(5)Rejection shall be issued by the Director-General of the Organization.

(6)No application may be rejected under paragraphs (2), (4) and (5) of this Article without affording the applicant or his agent the opportunity to regularize it to the extent and according to the procedures and forms prescribed.

- (7) Where the Organization finds that the conditions referred to in paragraph (1) above have been met, it shall register the mark and publish the registration.
- (8) Notwithstanding the provisions of the previous paragraphs, the Organization may itself decide to rectify obvious clerical errors contained in applications.
- (9) The legal date of the registration shall be the filing date.

Article 19

Appeal against rejection of the application

The applicant may appeal to the High Commission of Appeal within 60 days of the notification of the rejection decision.

Article 20

Issuance of the certificate of registration

On completion of the registration, the owner of the registration shall be furnished with a certificate containing the following information:

- (a) the registration number of the mark;
- (b) the application number of the mark;
- (c) the filing date of the application for registration;
- (d) the reproduction of the mark;
- (e) a statement of the classes of goods and services under the Nice Classification to which the registration pertains;
- (f) the goods or services to which the mark applies;
- (g) the company name or the surname, first name and address of the owner;
and
- (h) the validly claimed priority, if any.

Article 21

Publication of the registration

- (1) The organization shall publish the information stipulated in article 20 above for each certificate of registration issued, together with the name and address of the agent, if applicable. Such information shall be entered into the special registry of marks.
- (2) The implementing regulations shall fix and determine the procedures for publication.

Article 22

Duration of rights

The registration of a mark shall be valid for 10 years from the filing date of the application for registration; however, ownership of a mark may be preserved indefinitely through successive renewals of the registration, which may be effected every ten years.

Article 23

Access to information in the special register

Any person may, at any time after publication of the application for registration or registration of the mark, on written application and on payment of the requisite fee, obtain information, excerpts or copies of such information from the special register.

Article 24

Renewal of the registration of the mark

- (1) Renewal of the registration referred to in Article 22 above may be secured on application by the owner of the registration, filed during the last year of the 10-year period, on payment of the fees prescribed by regulation.
- (2) Nonetheless, a six-month grace period shall be allowed for payment of the fee after the end of that year, subject to payment of a surcharge fixed by regulation.
- (3) No changes may be made either to the mark or to the list of goods or services for which the mark was registered, subject to the right of the registered owner to limit the list.
- (4) Renewal of a mark shall not entail a fresh examination of the mark.
- (5) The Organization shall enter the renewal in the special register of marks and publish it in the manner specified in the implementing regulations of this Annex, noting, where appropriate, any limitation of the goods or services.
- (6) A mark whose registration has not been renewed may not be registered for the benefit of a third party in respect of identical or similar goods or services within three years following the expiry of the term of the registration or renewal.

PART III – INTERNATIONAL APPLICATION

Article 25

International protection of marks

- (1) When an application for the registration of a mark is filed with the Organization, or when it is registered, the applicant or the owner of the mark who is a national of a Member State or has his residence or a real and effective industrial or commercial establishment therein may ensure protection of his mark on the territory of the Contracting Parties of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted on June 27, 1989 and amended on October 3, 2006 and November 12, 2007.

- (2) The procedures for the implementation of the Madrid Protocol shall be fixed by the implementing regulations.

PART IV – RENUNCIATION, CANCELLATION, INVALIDITY AND RESTORATION

Article 26

Renunciation

- (1) After its registration, the registered owner of a mark may renounce the registration, at any time, either wholly or in respect of only some of the goods or services for which the mark was registered.
- (2) Renunciation shall be notified by registered letter with acknowledgement of receipt to the Organization, which shall enter it in the special register and publish it.
- (3) If a license has been recorded in the special register of marks, renunciation shall be entered only on submission of a declaration by which the licensee consents to the renunciation, save where the licensee has expressly waived that right in the license contract.

Article 27

Forfeiture

- (1) At the request of any person, the competent domestic court may ascertain the forfeiture and order the deregistration of any registered mark that:
- (a) for an uninterrupted period of five years prior to the request, has not been used on the territory of one of the Member States if its rightful owner fails to provide valid grounds;
 - (b) by the owner's action, has become the usual designation of goods and services;

Cancellation may apply to all or some of the goods or services for which the mark was registered.

- (2) The owner of the mark shall bear the burden of proof regarding use of the mark.

Use of a mark by another person shall be recognized as use of the mark, subject to endorsement by the owner. The same shall apply to use of the mark in a modified form that does not alter its distinctive character.

- (3) When the decision ordering removal is final, it shall be communicated to the Organization, which shall enter it into the special register of marks and remove the registration.
- (4) Removal shall be published in the format laid down in the implementing regulations. Registration of the mark shall then be deemed never to have had any effect.

Article 28

Invalidity

- (1)** The invalidation of the effects of the registration of a mark on national territory of a member State shall be declared by the competent domestic courts, at the request either of the Office of the Public Prosecutor or of any interested person or professional group.
- (2)** At the request of the applicants referred to above or of the Organization, the competent domestic court shall declare the registration of a mark invalid if it does not conform to the provisions of Articles 2 and 3 of this Annex or if it conflicts with a prior right; in the latter case, invalidation may only be declared at the request of the owner of the prior right. The invalidity may apply either to all or to only some of the goods or services for which the mark was registered.
- (3)** When the decision declaring the registration invalid becomes final, it shall be notified to the Organization by the more diligent party and the Organization shall enter it into the special registry of marks and publish a notice thereof.
- (4)** Invalidity shall be published in the format laid down in the implementing regulations. The registration shall be deemed invalid as from the date of such registration.

Article 29

Restoration

- (1)** Without prejudice to the provisions of Article 28 above, where the protection conferred by a registered mark is not renewed owing to circumstances beyond the control of the owner of the mark, the owner or entitled persons may apply for its restoration, on payment of the requisite renewal fee and of a surcharge whose amount shall be fixed by regulation, within six months of the date on which the circumstances ceased to exist, and no later than two years from the date on which renewal was due.
- (2)** The application for restoration of the mark, together with documents proving payment of the fee and the surcharge mentioned in paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.
- (3)** The Organization shall examine such grounds and shall either restore the mark or reject the application if it does not consider the grounds valid.
- (4)** Restoration shall not entail extension of the maximum duration of the mark.
- (5)** Restored marks shall be published by the Organization in the format prescribed by the implementing regulations.
- (6)** The rejection decision following an application for restoration shall be appealable before the High Commission of Appeal within 60 days of notification of the decision.
- (7)** Paragraphs (1) to (6) shall be applicable where the application for registration of the mark has not been filed within the time limits set by international treaties.

PART V – TRANSFER AND ASSIGNMENT OF MARKS AND CONTRACTUAL LICENSES

Article 30

Transfer of rights

- (1)** The rights subsisting in a mark shall be transferable in whole or in part.
- (2)** Acts involving transfer of ownership, licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge in respect of a mark shall, on pain of invalidity, be evidenced in writing.
- (3)** The transfer of ownership or the licensing of the right of exploitation may relate to all or only some of the goods or services to which the mark applies. Only the validity of licensing of the right of exploitation may be limited to the territory of one of the Member States.

Article 31

Enforceability against third parties

- (1)** The acts referred to in Article 30 above shall not be enforceable against third parties unless they are recorded in the special register of marks kept by the Organization and published in the Official Bulletin.
- (2)** Subject to conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the special register of marks or a record of the entries concerning marks that are the subject of a pledge, or a certificate attesting the absence of any such entries, and also identity certificates reproducing the information on the original specimen of the mark.

Article 32

License contract

- (1)** The owner of a mark may, by contract, grant to a natural or legal person a license enabling him to use the mark for all or some of the goods or services in respect of which the mark is registered.
- (2)** The duration of the license may not be longer than that of the registration of the mark.
- (3)** The license contract shall be prepared in writing and signed by the parties on pain of invalidity.
- (4)** The license contract shall be entered in the special register of marks of the Organization. It shall not be enforceable against third parties until it is entered in the register and published in the format prescribed in the implementing regulations.
- (5)** The license shall be removed from the register at the request of the owner of the mark or the licensee on presentation of proof of the expiry or termination of the license contract.

- (6) Unless otherwise stipulated in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or from using the mark himself.
- (7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from using the mark himself.

Article 33
Invalid clauses

- (1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they constitute anti-competitive practices and, in general, impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the certificate of registration of the mark or not necessary for the upholding of such rights.
- (2) The following shall not be considered restrictions within the meaning of paragraph (1) above:
 - (a) restrictions relating to the extent, scope or duration of exploitation of the mark or the quality of goods and services for which the mark may be used;
 - (b) the obligation incumbent on the licensee to abstain from any act liable to impair the validity of the registration of the mark.
- (3) Unless otherwise provided in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 34
Recognition of invalid clauses

The competent domestic court may establish the invalid clauses referred to in Article 33 above at the request of any person.

PART VI – COLLECTIVE MARKS AND COLLECTIVE CERTIFICATION MARKS

SECTION I – COMMON PROVISIONS

Article 35
Regulations governing use

- (1) The regulations governing use shall fix the conditions for the use of collective marks and collective certification marks.
- (2) The protection provided for in this Annex shall not encompass collective marks and collective certification marks whose regulations governing use are contrary to public policy or morality.

(3)The Organization shall also reject amendments to the regulations if they are contrary to public policy or morality.

Article 36

Designation of the nature of the mark

The mark must be designated, in particular on the application for registration referred to in Article 9(2)(a) above, and in the certificate referred to in Article 20 above, as a collective mark or a collective certification mark.

Article 37

Amendment of the regulations

The owner of the collective mark or the collective certification mark may at any time communicate in writing to the Organization any change made to the regulations governing the mark. An indication of such change shall be entered into the special register on payment of the requisite fee.

SECTION II – COLLECTIVE MARKS

Article 38

Right to the collective mark

In the general interest and in order to foster the development of commerce, industry, crafts and agriculture, the State, public companies, unions or groups of unions and associations or groups of producers, manufacturers, craftsmen and tradesmen may own collective marks for goods or services, provided that they are officially recognized and have legal personality.

Article 39

Use of the collective mark

Collective marks shall be affixed either directly by the groups mentioned in Article 38 above, as a means of control, or by members of the said groups on the goods or objects traded by them; in any event, such use shall be under the supervision of the group concerned and in accordance with the provisions of the instruments governing the collective marks in question.

Article 40

Defense of the collective mark

Any member of the group owning the collective mark may institute the civil and criminal proceedings provided for in this Annex, provided he proves the failure of the said group to act and calls on it to act.

Article 41

Transfer, invalidity and forfeiture of a collective mark

(1) Collective marks shall neither be assignable nor transferrable.

(2) Nevertheless, in the event of a legal merger, the Ministry responsible for industrial property may authorize its transfer to the new group created by the merger.

(3) A court may declare a collective mark invalid or forfeit where:

- (a) the owner of the mark, as defined in Article 38, has ceased to exist;
- (b) the rules governing its use are contrary to public policy or morality;
- (c) the mark does not fulfill the conditions set forth in the provisions of this part;
or
- (d) the owner of the mark referred to in sub-paragraph (a) above has knowingly used the collective mark, or allowed it to be used, under conditions other than those provided for in the rules referred to in sub-paragraph (b) above.

(4) Where the collective mark has been declared invalid or forfeit, it may not be appropriated for the same goods or services by virtue of a new registration or used for any purpose whatsoever. However, after 10 years as from the date of the final decision declaring the mark invalid or forfeit, the collective mark may be registered as such by a group as defined in Article 38, provided that the group has the same nationality as the previous group.

(5) Once it becomes final, the decision declaring the registration to be null and void shall be communicated to the Organization, which shall enter it into the special register of marks and publish a notice thereof.

(6) Invalidity shall be published in the format prescribed by the implementing regulations. The registration shall be considered null and void with effect from the date of such registration.

SECTION III – COLLECTIVE CERTIFICATION MARKS

Article 42

Right to the collective certification mark

A collective certification mark may **not** be filed by any person who is neither the manufacturer, nor the importer, nor the seller of the goods or services to which the collective mark pertains.

Article 43

Exploitation of the collective certification mark

Exploitation of the collective certification mark shall be open to any persons, aside from the owner, who provide goods or services meeting the conditions stipulated by the exploitation regulations.

Article 44

Conditions governing the transfer of collective certification marks

A collective certification mark may not be assigned, used as a pledge, or for any other means of enforcement. Nonetheless, the Ministry responsible for industrial property may authorize the transfer of the registration of a collective certification mark, provided the beneficiary of the transfer assumes responsibility for the actual control of the exploitation of the mark. The

transfer shall be entered in the special register and published in the official industrial property bulletin.

Article 45

Invalidity and forfeiture of the collective certification mark

(1) The competent domestic court may declare invalid or forfeit a collective certification mark where:

- (a)** the owner of the mark, as provided in Article 42 above, has ceased to exist;
- (b)** the regulations fixing the conditions of exploitation are contrary to public order and morality;
- (c)** the mark does not meet the requirements stipulated in the provisions of this part of the Annex; or
- (d)** The owner of the mark referred to in sub-paragraph (a) above knowingly allowed his collective mark to be used in conditions other than those provided for by the regulations referred to in sub-paragraph (b) above.

(2) Were invalidity or forfeiture is declared, the collective certification mark may not be deposited or used for the same goods or services on any account whatsoever. However, after 10 days with effect from the final decision on invalidity or forfeiture, the collective certification mark may be registered in this regard.

(3) Once final, the decision finding the registration null and void shall be communicated to the Organization, which shall enter it into the special register of marks and publish a notice thereof.

(4) Invalidity shall be published in the format prescribed by the implementing regulations. The registration shall be considered null and void with effect from the date of such registration.

PART VII – LEGAL ACTION AND PROCEDURE

SECTION I – COMMON PROVISIONS

Article 46

Competent court

(1) Other civil action concerning marks shall be brought before the competent domestic courts and heard as for summary matters.

(2) When seized of a case for counterfeiting, the competent domestic court in criminal matters shall rule on the challenges brought by the defendant, either as to the invalidity or expiry of the mark, or as to matters relating to ownership of the mark.

Article 47

Claim of ownership before the court

- (1) Where a mark is registered by a person who, at the time of deposit, knew or should have known that another person had priority to exploit the mark, the other person may claim ownership of the mark before the competent domestic court.

Where a mark is acquired in infringement of a legal or contractual provision, the prejudiced party may also claim ownership of the mark before the competent domestic court.

- (2) The final decision transferring the mark shall be communicated to the Organization by the most diligent party. The Organization shall enter it into the special registry and publish a notice thereof. It shall notify the decision to all licensees whose names appear in the special register.

Article 48

Acts prior to registration of the mark

Acts prior to the publication of the application for registration of the mark may not be considered to have been prejudicial to the rights attaching thereto. However, acts subsequent to the notification to the alleged counterfeiter of an official copy of the application for registration may be recorded and prosecuted. The competent domestic court seized of the matter shall hold its ruling in abeyance until the registration is published.

SECTION II – CIVIL AND CRIMINAL ACTION

Article 49

Counterfeiting

- (1) Any infringement of the rights of the owner of the mark as defined in Article 6 shall constitute counterfeiting. Counterfeiters shall incur civil and criminal liability for their acts.
- (2) Counterfeiting may be proven by any means.

Article 50

Prevention of infringement

- (1) Any person with the *locus standi* to bring action for counterfeiting may make an urgent application to the competent domestic court seeking, if necessary under financial compulsion, an order against the alleged counterfeiter or the intermediaries whose services he uses, instituting any measure intended to prevent an imminent infringement of the rights conferred by the title or to prevent continuation of the alleged counterfeiting.
- (2) The competent domestic court may also order all urgent measures on application where the circumstance require that such measures should not be taken *inter partes*, in particular where any delay is likely to cause irreparable harm to the applicant. If sought through an urgent or *ex parte* application, the court may only order the measures

sought if the evidence, reasonably accessible to the applicant, makes it likely that his rights are being infringed or that such infringement is imminent.

- (3)** The competent domestic court may prohibit the continuation of the alleged acts of counterfeiting, subject them to guarantees intended to secure the compensation of the applicant, if warranted, or order the seizure or transfer to a third party of the products suspected of infringing the rights conferred by the title, to prevent their introduction into or circulation in commercial channels.
- (4)** On receipt of an urgent or *ex parte* application, the competent domestic court may make the measures it orders contingent on the provision of guarantees by the applicant for the purpose of compensating the defendant, if the proceedings for counterfeit are later found to be without merit, or if the measures are cancelled.
- (5)** Where the measures taken to stop an infringement of rights are ordered prior to proceedings on the merits, the applicant must file an application, either before a civil or criminal court, within 10 working days after the day on which the measure is implemented. Otherwise, on application of the defendant, who is not required to justify his application, the measures ordered shall be cancelled, without prejudice to any damages that may be claimed.

Article 51

Seizure for counterfeiting

- (1)** The owner of a mark or the holder of an exclusive right of exploitation may request any bailiff, public officer or judicial officer, assisted if applicable by an expert, to make a detailed inventory, with or without seizure, of the products he claims to be marked, delivered or supplied to his prejudice in infringement of the provisions of this Annex, following an order by the presiding judge of the competent domestic court within whose jurisdiction the operations are to be conducted, including at the border.
- (2)** The order shall be made on application and on submission of proof of registration of the mark.
- (3)** Where grounds for seizure exist, the above-mentioned order may require the applicant to make a security deposit which he must provide before the seizure is effected. The deposit shall be adequate without deterring applicants from availing themselves of the procedure.

The security deposit shall always be required of foreigners seeking a seizure.

- (4)** The person in possession of the objects identified or seized shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff, public officer or judicial officer and the customs official.

Article 52

Time limit for initiating proceedings on the merits

Should the petitioner fail to institute criminal or civil proceedings within 10 working days of the seizure or inventory, such seizure or inventory shall *ipso jure* be void, without prejudice to any damages that may be claimed.

Article 53

Search for information

- (1)** If so requested, the competent domestic court may make an order, if necessary under financial compulsion, for the purposes of determining the origin and distribution networks of the counterfeit products or processes that are violative of the applicant's rights, the disclosure of all documentation or information held by the defendant or by any person found in possession of counterfeit products or found to be applying counterfeit processes or providing services used in counterfeiting or reported as being involved in the production, manufacture or distribution of such products, the application of such processes or the provision of such services.
- (2)** The disclosure of documents or information may be ordered if there is no legitimate impediment.

Article 54

Determination of damages

The court seized of the matter shall determine the amount of the damages, having regard to the adverse financial effects, including loss of earnings, suffered by the prejudiced party, the profit made by the counterfeiter and the moral damage caused to the owner of the rights as a result of the infringement.

Article 55

Other penalties

- (1)** In the event of a conviction for counterfeiting, the competent domestic court may order, at the request of the injured party, that the goods found to be counterfeit and the materials and instruments that mainly served in their creation or manufacture be withdrawn from commercial channels, definitively removed from such channels, destroyed or confiscated.
- (2)** The competent domestic court may also order any appropriate measures to publicize the verdict, in particular its posting or publication, in whole or as excerpts, in the newspapers or on the online public communication services it designates, according to its stipulations.
- (3)** The measures set forth in paragraphs (1) and (2) above shall be ordered to the cost of the counterfeiter.

Article 56
Limitation of time

The civil proceedings for counterfeiting provided for in this part shall be time-barred by five years with effect from the date of the alleged acts.

Article 57
Penalties for illicit exploitation of a registered mark

(1) The following persons shall be punished by a fine of 5,000,000 to 30,000,000 CFA francs and by imprisonment for three months to two years, or one of the above penalties alone:

- (a)** persons who fraudulently reproduce a mark, even with the addition of such words as "formula, manner, system, imitation, type, method"; persons who fraudulently use a reproduced mark for goods or services identical to those designated in a registration;
- (b)** persons who knowingly sell or offer for sale one or more goods bearing a counterfeit or fraudulently affixed mark, or those who knowingly sell, offer for sale, provide or offer to provide goods or services under such a mark;
- (c)** persons who fraudulently delete or modify a properly affixed mark;
- (d)** persons who fraudulently delete or modify a properly affixed mark such that it is likely to create confusion in public perception, reproduce, exploit or affix a mark or exploit a reproduced mark for goods or services that are similar to those designated in the registration; persons who, in the same conditions, imitate a mark or exploit an imitation mark for goods or services identical or similar to those designated in a registration;
- (e)** persons who knowingly sell or offer for sale one or more goods bearing a fraudulently imitated mark or one bearing indications liable to mislead the buyer as to the nature of the goods, or persons who provide or offer for sale goods or services under such a mark; and
- (f)** persons who fraudulently exploit a mark for goods marketed by the owner of the mark, but whose state has been subsequently modified or altered.

(2) The following persons shall also be punishable with the penalties set forth in paragraph (1) above:

- (a)** persons who knowingly provide a product or render a service other than that requested of them under a registered mark; and
- (b)** persons who make use of a mark bearing information liable to mislead the buyer as to the nature of the goods.

Article 58

Penalties pertaining to compulsory marks and prohibited signs

The following persons shall be punished with a fine of 5,000,000 to 10,000,000 CFA francs and with imprisonment for 15 days to six months, or one of the above penalties alone:

- (a) persons who do not affix to their goods a mark that has been declared compulsory;
- (b) persons who sell or offer for sale goods that do not bear a mark declared compulsory for goods of that type;
- (c) persons who violate the terms of decisions taken under Article 1 of this Annex; and
- (d) persons who incorporate in their marks signs that are prohibited under the provisions of this Annex.

Article 59

Non-cumulative penalties

- (1) The penalties specified in Articles 57 and 58 of this Annex shall not be cumulative.
- (2) The most severe penalty alone shall be imposed for all acts prior to the first act prosecuted.

Article 60

Penalties for recidivism

- (1) In the event of recidivism, the penalties specified in Articles 57 and 58 shall be doubled.
- (2) Recidivism shall be deemed to have occurred where the offender has been convicted of one of the offenses specified in this Annex within the preceding five years.

Article 61

Mitigating or aggravating circumstances

The provisions of the national legislation of Member States on mitigating or aggravating circumstances shall apply to the offenses provided for in this Annex.

Article 62

Deprivation of electoral rights

- (1) Persons convicted of the illicit exploitation of a mark may also be deprived of the right to participate in elections to professional groups such as chambers of commerce and industry and chambers of agriculture for a period not exceeding 10 years.
- (2) The competent domestic court may order the posting of the judgement in the places that it shall specify, and its publication, in full or as excerpts, in newspapers that it shall designate, all to the cost of the convicted person.

Article 63

Fate of counterfeited marks and goods

- (1)** The competent domestic court may order the confiscation of goods bearing a mark recognized as being contrary to the provisions of Article 59, even in the event of acquittal, and the confiscation of implements or tools that served specifically in the commission of the offense.
- (2)** The competent domestic court may in all cases order the destruction of goods bearing marks violative of Article 59 above.

Article 64

Other measures relating to compulsory marks

- (1)** In the cases provided for in Article 58, the competent domestic court shall always order that the marks declared compulsory be affixed to the relevant goods.
- (2)** The competent domestic court may order the confiscation of goods if the accused has been convicted of one of the offenses provided for in Article 58 during the preceding five years.

Article 65

Penalties pertaining to collective marks or collective certification marks

- (1)** The penalties provided for in Articles 57, 58, 60, 62, 63 and 64 of this Annex shall apply to collective marks or collective certification marks for goods or services.
- (2)** Moreover, the following shall be punishable by the penalties provided for in Article 57 above:
 - (a)** persons who knowingly make any use of a collective mark or collective certification mark under conditions other than those specified in the regulations governing use referred to in Article 35;
 - (b)** persons who sell or offer for sale goods bearing a collective mark or collective certification mark unlawfully used in light of regulations governing marks for goods or services;
 - (c)** persons who knowingly use a mark reproducing or imitating the collective mark or collective certification mark within 10 years of the forfeiture of a collective mark or a collective certification mark;
 - (d)** persons who knowingly sell, offer for sale, provide or offer to provide goods or services under a mark reproducing or imitating the said collective mark or collective certification mark within ten years from the date of invalidation of a collective mark or a collective certification mark.

SECTION III – BORDER MEASURES

Article 66

Measures on request

- (1) On written application by the owner of a registered mark or by the beneficiary of an exclusive right of exploitation, supported by documentary proof of his right, the customs administration may detain any goods its suspects to be counterfeit when conducting inspections.
- (2) The public prosecutor, the applicant and the importer of the goods shall be immediately informed by the customs services of such detention.

In providing the information referred to in paragraph (2) above, the type and actual or estimated quantity of the goods shall be communicated to the owner of the registered mark or to the beneficiary of an exclusive right of exploitation.

- (3) The detention measure shall be lifted *ipso jure* within 10 working days, or within three working days in the case of perishable commodities, of the notification of the detention of the goods if the applicant fails to provide proof of the following to the customs services:

- (a) interim measures ordered by the competent domestic court; or
- (b) an application to the competent national judge in either civil or criminal matters, providing, where applicable, the requisite guarantees to compensate the holder of the goods where the alleged counterfeiting is ultimately not found to exist.

- (4) For the purposes of taking the legal action referred to in the paragraph (3) above, the applicant may request communication by the customs administration of the names and addresses of the sender, importer, quantity and intended recipient of the detained goods, notwithstanding provisions governing professional secrecy by which customs officials are bound.
- (5) On expiry of the 10-day time limit stipulated in paragraph (3) above, where the decision to suspend the free movement of goods is not taken by a judicial authority or by an independent administration, the owner, the importer or the intended recipient of the goods may, on payment of a security deposit, cause the suspension of the detention order.

Article 67

Ex-Officio action

- (1) In the absence of a written application by the owner of a registered mark or the beneficiary of an exclusive exploitation license, the customs authorities may detain goods likely to infringe a registered mark or an exclusive right of exploitation, as part of their inspection.

- (2) Such detention shall be immediately notified to the owner of the registered mark or the beneficiary of the exclusive right of exploitation. The public prosecutor shall also be informed of the measure.
- (3) During the notification referred to in paragraph (2) above, the type and the actual or estimated quantity of the goods shall be communicated to the owner of the registered mark or the beneficiary of the exclusive right of exploitation.
- (4) The liability of the customs authorities may be incurred in the event of unjustified detention, save where they acted in good faith.

PART VIII – TRANSITIONAL AND FINAL PROVISIONS

Article 68

Continuing validity of marks registered or recognized pursuant to the Bangui Agreement, Act of February 24, 1999

Any mark registered or recognized pursuant to the provisions of the Bangui Agreement, Act of February 24, 1999 and its Annex III shall remain valid for the duration stipulated in the Agreement, in accordance with this article.

Article 69

Acquired rights

- (1) This Annex shall apply to marks deposited with effect from the date of its entry into force, subject to the rights acquired under Annex III of the Bangui Agreement, Act of February 24, 1999.
- (2) Applications for registration of marks filed before the date of entry into force of this Annex shall remain subject to the rules that were applicable at the time of their filing.
- (3) Nonetheless, the exercise of rights arising from marks registered in accordance with paragraph (2) above shall be subject to the provisions of this Annex, with effect from the date of its entry into force, subject to acquired rights, which shall be maintained.
- (4) Annex III of the Bangui Agreement, Act of February 24, 1999 is repealed.

ANNEX IV
INDUSTRIAL DESIGNS

PART I – GENERAL PROVISIONS

Article 1

Definition

- (1)** For the purposes of this Annex, any arrangement of lines or colors shall be considered a design, and any three-dimensional shape, whether or not associated with lines or colors, shall be considered a model, provided that the said arrangement or shape gives a special appearance to an industrial or craft product and may serve as a pattern for the manufacture of such a product.
- (2)** If the object can at the same time be considered a new design and a patentable invention and if the elements constituting the novelty of the design are inseparable from those of the invention, the object may only be protected under the provisions of Annex I on Patents or Annex II on Utility Models.
- (3)** The protection accorded by this Annex shall not exclude any rights deriving from other legislative provisions of Member States, in particular those concerning literary and artistic property.

Article 2

Industrial designs eligible for registration

- (1)** An industrial design may be registered if it is new.
- (2)** An industrial design is new if it has not been disclosed anywhere in the world by publication in tangible form, by use or by any other means before the filing date or, where applicable, before the priority date of the application for registration.
- (3)** The novelty referred to in paragraph (1) above shall not be denied if, during the 12 months preceding the date specified in paragraph (2), the industrial design was the subject of disclosure resulting from:
 - (a)** manifest abuse in relation to the applicant or his predecessor in title; or
 - (b)** the fact that the applicant or his predecessor in title has displayed it at an official or officially recognized international exhibition.
- (4)** Industrial designs whose exploitation is contrary to public policy or morality may not be registered, on the understanding that the commercial exploitation of such designs is not considered contrary to public policy or morality merely on account of its being prohibited by a legal or regulatory provision.

Article 3

Rights conferred by registration

Any creator of an industrial design and his successors in title shall have the exclusive right to exploit the design and to sell or cause to be sold for industrial or commercial purposes the goods in which the design is incorporated, subject to the conditions of this Annex, without prejudice to the rights conferred by other legal provisions.

Article 4

Right to the industrial design

- (1)** Only properly deposited designs shall enjoy the benefits of this Annex.
- (2)** A design shall be owned by the person who created it or in his successors in title; however, in the absence of proof to the contrary, the first applicant shall be presumed to be the creator of the design.
- (3)** If several persons jointly create an industrial design, the right to the certificate of registration shall belong to them jointly and the title shall be granted to them as joint owners.

Article 5

Joint ownership of industrial designs

Unless otherwise provided, joint ownership of an industrial design shall be governed by the following provisions:

- (a)** Each of the joint owners may work the design to his benefit, provided he makes fair compensation to the other joint owners who are not personally working the creation or who have not granted exploitation licenses. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.
- (b)** Each of the joint owners may institute proceedings for counterfeit to his own exclusive benefit. The joint owner who institutes proceedings for infringement shall notify the other joint owners of such referral; any ruling on the action shall be held in abeyance until proof of such notification is provided.
- (c)** Each of the joint owners may grant to a third party a non-exclusive exploitation license to his benefit, provided he makes fair compensation to the other joint owners who are not personally exploiting the creation or have not granted an exploitation license. Failing amicable agreement, such compensation shall be fixed by the competent domestic court.

However, the draft license agreement shall be notified to the other joint owners, together with an offer to assign the share at a specific price.

Within three months of such notification, any of the joint owners may challenge the granting of the license provided they acquire the share of the person who wishes to grant the license.

Failing agreement within the time limit prescribed in the sub-paragraph above, the price shall be fixed by the competent domestic court. The parties shall have one month with effect from the notification of the judicial decision or, in the event of an appeal, the appellate judgement, to waive the granting

of the license or the purchase of the jointly owned share without prejudice to any damages owed; costs shall be borne by the waiving party.

- (d)** An exclusive exploitation license may only be granted with the agreement of all the joint owners or by the leave of the competent domestic court.
- (e)** Each joint owner may, at any time, assign his share. Joint owners shall enjoy a right of first refusal within three months of the notification of the intent to assign. Failing agreement as to price, the price shall be fixed by the competent domestic court. Parties shall have one month with effect from the notification of the judgement or appeal decision to waive the sale or purchase of the jointly owned share, without prejudice to the possible damages owed; costs shall be borne by the waiving party.
- (f)** The joint owner of an industrial design may notify the other joint owners that he is relinquishing his share to their benefit. With effect from the entering of this relinquishment in the special patents registry or, with effect of notification of such to the Organization, the joint owner in question shall be released from all obligations in respect of the other joint owners; these joint owners shall divide the relinquished share among themselves proportionately to their rights in the joint ownership, unless otherwise agreed.

Article 6

Industrial designs by employees

- (1)** Where the creator is an employee and in the absence of contractual provisions more favorable to the employee, the right to the registration of the industrial design shall be governed by the following provisions:
 - (a)** Creations by employees in the performance either of an employment contract encompassing an inventive task which corresponds to their actual functions, or of studies and research expressly assigned to them, shall belong to the employer. In such case, the employee who makes such an invention shall receive supplementary remuneration which, in the absence of a determination through collective or individual negotiation, shall be fixed by the competent domestic court.
 - (b)** Where an employee is not required by his employment contract to engage in creative activity, but makes a creation using the techniques and means specific to the business or company, or information it has procured, the employer has the right to ownership or enjoyment of all or some of the rights attaching to the certificate protecting the creation of the employee. Nonetheless, the employee shall secure a fair price therefor which, failing agreement between the parties, shall be fixed by the competent domestic court. The court shall take into consideration any information that may be brought before it, in particular by the employer and the employee, to calculate a fair price, both depending on

the initial contribution of each party and on the industrial and commercial utility of the invention.

(c) All other creations shall belong to the employee.

- (2)** In any event, an employee who creates an industrial design shall immediately inform his employer, who shall acknowledge receipt of the information.
- (3)** The employee and the employer shall share all useful information on the creation in question. They shall refrain from any disclosure that may partly or wholly jeopardize the exercise of the rights conferred by this Annex.
- (4)** Any agreement between the employee and his employer for the purposes of an employee creation shall, on pain of invalidity, be recorded in writing.
- (5)** In the event of the situation referred to in sub-paragraph 1(a) above, if the employer expressly renounces the right to the certificate, the right shall belong to the employee.
- (6)** The provisions of this article shall also apply to employees of the State, public corporations and any other legal person governed by public law.
- (7)** Unless otherwise provided for in the contract, the right to the certificate of registration for an industrial design created in fulfillment of an order shall belong to the client.

Article 7

Limitation of the rights conferred

The rights deriving from the industrial design shall not encompass the following:

- (a)** acts performed by any person who, on the filing date of the application for registration, already owned the design. Such a person is authorized to use the industrial design for the purposes of his business, in his own workshops or in another person's workshops. This right may only be transferred with the business.
- (b)** acts concerning objects offered for sale in the territory of a Member State or a third-party State by the owner of the certificate of registration of the industrial design or with his consent.
- (c)** acts concerning private use and non-commercial purposes.
- (d)** acts of reproduction for the purposes of illustration or education, provided that such acts are not prejudicial to the normal exploitation of the designs and state the registration and the name of the owner of the rights.

PART II – FILING, REGISTRATION, PUBLICATION AND RESTORATION

Article 8

Filing of the application

- (1)** The application for registration of an industrial design shall be filed with the Organization or the Ministry responsible for industrial property in accordance with Article 8 of the Agreement, this Annex and the procedures stipulated in the implementing regulations.
- (2)** The application file shall comprise:
- (a)** an application addressed to the Director-General of the Organization;
 - (b)** a document proving payment of the requisite fees to the Organization;
 - (c)** an unstamped, private power of attorney if the applicant is represented by an agent;
 - (d)** a statement of the type of product for which the design is to be used;
 - (e)** on pain of invalidity, two identical copies of a graphical or photographic representation or a specimen of the design in a sealed envelope according to the measurements stipulated by regulation;
 - (f)** a description of the industrial design(s) if necessary; and
 - (g)** the priority document, if applicable.
- (3)** One filing may include one to 100 designs, which shall be numbered from first to last, provided that they belong to the same class of the International Classification in accordance with the Locarno Agreement. Designs additional to the hundredth shall not be considered validly deposited in light of this Annex.
- (4)** At the time of filing, the application may contain a request for publication of the design, once registered, to be delayed for a period not exceeding 12 months following the filing date of the application, or following the priority date thereof where priority is claimed.

Article 9

Claim of priority

- (1)** Any person wishing to avail himself of the priority of an earlier application shall be required to file his application for registration with the Organization within six months of the prior claim.
- (2)** The applicant shall attach the following documents to his application for registration, or send them to the Organization within three months of the filing of his application:

(a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified true copy of the earlier application.

(3) An applicant who seeks to avail himself of two or more rights of priority shall comply with the provisions stipulated above for each of them; he shall also pay a fee for each right of priority claimed and shall submit proof of payment of the fee within the three-month period mentioned in paragraph (1) above.

(4) Any priority claim that reaches the Organization more than three months after the filing of the application shall entail loss of the right of priority.

(5) However the right of priority of the applicant may be restored in accordance with Article 21 below.

(6) The decision to reject such application for restoration shall be appealable before the High Commission of Appeal.

Article 10

Report of filing and transmittal of documents

(1) A report prepared by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.

(2) A copy of the report shall be issued to the applicant.

(3) The Ministry responsible for industrial property shall transmit the documents to the Organization within five working days of the filing date.

Article 11

Admissibility of the filing

The Organization shall grant as the filing date the date of receipt of the application for registration provided that, at the time of receipt, the application contains the following:

(a) information allowing the applicant's identity to be established;

(b) any graphical or photographic representations of the industrial design(s);

(c) the products in which the industrial design(s) is or are incorporated; and

(d) proof of payment of the prescribed fees.

Article 12

Publication of the application

For each application for the registration of an industrial design, the Organization shall publish the following information:

- a) the number of the application;
- b) the filing date;
- c) any graphical or photographic representations of the industrial design(s);
- d) the products in which the industrial design(s) is or are incorporated;
- e) the company name, surname, first name and address of the applicant;
- f) the priority claimed, if any; and
- g) the name and address of the agent, if any.

Article 13 Opposition

- (1)** Any person may oppose the registration of an industrial design by sending to the Organization, within three months of the publication mentioned in Article 12 above, a written statement setting out the reasons for his opposition, which reasons shall be based on an infringement either of the provisions of Articles 1, 2 or 4 of this Annex, or of a prior right belonging to the opposing party. The opposition may also be based on a prior filing or an application benefitting from an earlier priority date.
- (2)** The Organization shall send a copy of the statement of opposition to the applicant or his agent, who may file a reasoned reply within three months, renewable once on request. The reply shall be communicated to the opposing party or his agent.
- (3)** Before ruling on the opposition, the Organization shall, on request, hear the parties or their agents.
- (4)** The Organization's ruling on the opposition shall be appealable before the High Commission of Appeal for 60 days as from the notification of the decision to the parties.
- (5)** The Organization may only reject the application for registration if the opposition is well-founded.
- (6)** The final rejection ruling shall be published in the Official Bulletin of the Organization.

Article 14 Claim of ownership before the Organization

- (1)** Where a person not entitled to register an industrial design files an application, the entitled person may claim ownership of the application before the Organization, within three months of the publication of the application, submitting a written notice setting forth the grounds of his claim.
- (2)** The Organization shall send a copy of the notice of claim to the applicant or his agent, who may submit a reasoned reply to the notice within three months, renewable once on request. The reply shall be communicated to the claimant or his agent.

- (3)** Before ruling on the claim of ownership, the Organization shall hear the parties or their agents on request.
- (4)** The Organization's ruling on the opposition shall be appealable before the High Commission of Appeal for 60 days as from the notification of the decision to the parties concerned.
- (5)** The Organization may only transfer the application for registration to the claimant if the claim is well-founded.
- (6)** The final decision on the transfer of the application shall be published in the special register of the Organization.

Article 15

Division of the application

- (1)** Any initial application concerning several designs may be divided by the applicant into several applications, called divisional applications:
 - (a)** at least until the decision on the registration of the industrial design;
 - (b)** during any proceedings for opposition or claim of ownership of the application for the registration of the industrial design; and
 - (c)** during any appellate proceedings concerning the ruling on the opposition or claim of ownership of the industrial design.
- (2)** Divisional applications shall retain the filing date of the initial application and, if applicable, the benefit of the priority date.
- (3)** A fee shall be required for all divisional applications.

Article 16

Examination of the application for registration

- (1)** The Organization shall examine all applications for the registration of industrial designs to determine whether the formal conditions referred to in Articles 8 and 9 of this Annex have been met and the requisite fees paid.
- (2)** Any application that fails to fulfill the conditions set forth in Article 8, with the exception of sub-paragraph 1(b), and Article 9 shall be considered defective. The defect shall be notified to the applicant or his agent, who shall be invited to remedy it within three months of the date of the notification. This time limit may be extended for 30 days on request by the applicant or his agent where a justifiable need exists. The remedied application shall retain the date of the initial application.
- (3)** Where the rectified documents are not provided within the prescribed time limit, the application for registration of the industrial design shall be rejected.

- (4)** The rejection shall be issued by the Director-General. No filing may be rejected by virtue of paragraphs 4 and 5 of this Article without inviting the applicant or his agent to correct the application to the extent of and according to the prescribed forms and procedures.
- (5)** Where the Organization notes that the conditions set forth in paragraph (1) above have been met, it shall register the industrial design and publish the registration.
- (6)** The legal date of the registration shall be the filing date.
- (7)** Notwithstanding the provisions of the preceding paragraphs, the Organization may correct obvious clerical errors contained in an application.
- (8)** The applicant may file an appeal with the High Commission of Appeal within 60 days of the notification of the rejection decision.

Article 17

Issuance of the certificate of registration

- (1)** Once the registration is completed, the owner of the registration shall be issued with a certificate containing the following information:
 - (a)** the registration number of the industrial design;
 - (b)** the filing number of the application for registration;
 - (c)** the filing date of the application;
 - (d)** a statement of the class under the Locarno Classification to which the registration pertains;
 - (e)** the products to which the industrial design applies;
 - (f)** the company name or the surname, first name and address of the owner;
and
 - (g)** the validly claimed priority, if applicable.
- (2)** The Organization shall attach the graphical or photographic representations of the industrial design to the certificate.

Article 18

Publication of the registration

- (1)** The Organization shall publish the following information on the registered industrial design for each certificate of registration:
 - (a)** the registration number of the design;
 - (b)** the filing number;

- (c) the filing date of the application;
- (d) the statement of the class under the Locarno Classification to which the registration pertains;
- (e) the title of the design;
- (f) the company name or the surname, first name and address of the owner;
- (g) the name and address of the creator of the design, unless he has requested not to be mentioned in the publication;
- (h) a statement of the validly claimed priority, if applicable;
- (i) the date of the priority and the country in which the earlier application was filed and the number of the earlier application, if applicable;
- (j) the name and address of the agent, if applicable; and
- (k) the registration date of the design.

(2) The implementing regulations shall determine the procedures for publication.

Article 19

Term of protection

- (1) Subject to the provisions of paragraph (2) below, the term of the protection conferred by a certificate of registration of an industrial design shall expire at the end of the fifth year, with effect from the filing date of the application for registration.
- (2) The registration of a design may be renewed for a further two consecutive periods of five years on request by the owner and on payment of a renewal fee whose amount shall be fixed by regulation.
- (3) The renewal fee for an industrial design shall be paid within the twelve months preceding the expiration of the period of registration. However, a six-month grace period shall be allowed for payment of the fee after such expiration, subject to payment of a surcharge fixed by regulation.
- (4) The owner of an industrial design who fails to pay the renewal fee within the prescribed time limit shall forfeit his rights.

Article 20

Communication of application documents

- (1) The descriptions, drawings and photographs of registered industrial designs shall be kept by the Organization which, after the publication provided for in Article 18 above, shall communicate them on request. Specimens of industrial designs shall be kept by the Organization for eight years and may be examined by any interested person.

- (2) After the publication referred to in paragraph (1) above, any person may obtain an official copy of the descriptions, drawings and photographs.
- (3) The provisions of paragraphs (1) and (2) above shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents authorizing certain such applicants to claim that priority.
- (4) An applicant for registration wishing to avail himself abroad of the priority of his filing before registration of the industrial design may obtain an official copy of his application.

Article 21 **Restoration**

- (1) Where the protection conferred by an industrial design has not been renewed owing to circumstances beyond the control of the owner, the owner or entitled persons may apply for its restoration, on payment of the requisite renewal fee and of a surcharge whose amount shall be fixed by regulation, within six months of the date on which the circumstances ceased to exist, and no later than two years from the date on which renewal was due.

(2) The application for restoration of the industrial design, together with documents proving payment of the fee and surcharge mentioned in paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.
- (3) The Organization shall examine the grounds and shall either restore the design or reject the application if it does not consider the grounds valid.
- (4) Restoration shall not entail extension of the maximum duration of the industrial design. Third parties who started to exploit the design after the registration expired shall have the right to continue such exploitation.
- (5) Restored designs shall be published by the Organization in the format prescribed by the implementing regulations.
- (6) A rejection decision following an application for restoration shall be appealable before the High Commission of Appeal within 60 days of its notification.
- (7) Paragraphs (1) to (5) shall be applicable where the application for registration of the design is not filed within the time limits set by international treaties.

Article 22 **Duration of preservation**

Where designs have not been claimed by their owners within two years following the expiration of the period of protection provided for in Article 20(1) above, the specimens of the filed designs shall be destroyed.

Article 23

Inadmissibility for non-payment

No filing shall be admissible if the application is not accompanied by a document proving payment to the Organization of the fees referred to in Article 8(2)(b).

PART III – TRANSFER, ASSIGNMENT AND LICENSING OF RIGHTS IN INDUSTRIAL DESIGNS

Article 24

Transfer of rights

- (1) The rights subsisting in an industrial design shall be transferable in whole or in part.
- (2) Acts involving transfer of ownership, licensing of the right of exploitation or assignment of that right, or a pledge or cancellation of a pledge in respect of a design shall be evidenced in writing on pain of invalidity.

Article 25

Registration and publication of acts

- (1) The acts mentioned in Article 24 above shall not be binding on third parties unless they are entered in the special register of designs kept by the Organization and published in the Official Bulletin of Industrial Property. A copy of such acts shall be kept by the Organization.
- (2) The Organization shall furnish to any person who so requests a copy of the entries in the special register of designs, a record of the entries concerning industrial designs that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 26

License contract

- (1) The owner of an industrial design may license any natural or legal person by contract to exploit the design.
- (2) The duration of the license may not be longer than that of the registration of the design.
- (3) The license contract shall be evidenced in writing and signed by the contracting parties on pain of invalidity.
- (4) The license contract shall be entered in the special register of designs kept by the Organization, on payment of a fee fixed by regulation; the license shall not be enforceable against third parties until such entry and publication.
- (5) The entry of a license shall be removed at the request of the owner of the design or the licensee on provision of evidence of the expiration of the license.

Article 27
Invalid clauses

- (1)** Clauses in license contracts or relating to such contracts that constitute anti-competitive practices and, in general, clauses imposing on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the registration of the industrial design or not necessary for the upholding of such rights shall be invalid.
- (2)** The competent domestic court shall ascertain the invalid clauses referred to in paragraph (1) above at the request of any person.

PART IV – LEGAL ACTION AND PROCEDURE

Article 28
Competent court

- (1)** Civil action relating to industrial designs shall be brought before the civil courts and judged as for summary proceedings.
- (2)** Where the competent domestic court for criminal matters is seized of a case for counterfeiting, it shall rule on the challenges brought by the defendant either as to invalidity or expiry of the certificate of registration of the industrial design, or on the ownership of the certificate.

Article 29
Condition for initiation of criminal proceedings

Criminal proceedings may be initiated concurrently by the Public Prosecutor's Office and the prejudiced party.

Article 30
Invalidity of the registration

- (1)** The registration of an industrial design shall be declared invalid by a court decision where:
 - (a)** it is not consistent with the provisions of Articles 1 and 2 above;
 - (b)** the owner of the registration could not enjoy the protection provided for in Article 4;
 - (c)** the industrial design infringes rights attaching to a prior industrial design which was disclosed to the public after the date of filing of the application for registration or, where priority is claimed, after the priority date, and is still protected as from a prior date by the registration of an industrial design;
 - (d)** it infringes the rights of a third party; or
 - (e)** the industrial design uses a prior protected distinctive sign without the authorization of its owner.

The grounds for invalidity provided for in sub-paragraphs (b), (c), (d) and (e) may be relied on either by the public prosecutor or by any other interested person or professional union.

- (2) If the grounds for invalidity affect only a part of a registration, the registration may be maintained in modified form provided that in such form, the industrial design fulfills the criteria for the grant of protection and its identity is maintained.
- (3) Where the judicial decision declaring partial or total invalidity of the registration becomes final, it shall be communicated by the most diligent party to the Organization, which shall enter it into the special register for industrial designs and public a notice to that effect.

Article 31

Claim of ownership before the court

- (1) Where the industrial design has already been registered, the claim of ownership shall be brought before the competent domestic court. In such case, the action shall be time-bound by three years as from the publication of the registration of the industrial design. Action brought against a defendant acting in bad faith shall not be time-bound.
- (2) The final decision transferring the registration shall be notified to the Organization by the more diligent party.
- (3) The Organization shall enter it into the special register and publish a notice to that effect. It shall notify the decision to any beneficiary of a license whose name appears in the special register.

Article 32

Prevention of infringement

- (1) Any person empowered to bring action for counterfeiting may make an urgent application to the competent domestic court seeking, if necessary under financial compulsion, an order against the alleged counterfeiter or the intermediaries whose services he uses, instituting any measure intended to prevent an imminent infringement of the rights vested in the certificate of registration or to prevent the continuation of the alleged counterfeiting.
- (2) The competent domestic court may also order all urgent measures on application where the circumstance require that such measures should not be taken *inter partes*, in particular where any delay is likely to cause irreparable harm to the applicant. If sought through an urgent order or by application, the court may only order the measures sought if the evidence, reasonably accessible to the applicant, makes it likely that his rights are being infringed or that such infringement is imminent.
- (3) The competent domestic court may prohibit the continued performance of the alleged acts of counterfeiting, subject them to guarantees intended to secure the compensation of the applicant, if warranted, or order the seizure or custodial transfer to a third party of the products suspected of infringing the rights conferred by the title, to prevent their introduction or circulation in commercial circuits.

- (4) On receipt of an urgent or *ex parte* application, the competent domestic court may make the measures it orders contingent on the provision of guarantees by the applicant for the purpose of compensating the defendant if the proceedings for counterfeit are later found to be without basis or if the measures are cancelled.
- (5) Where the measures taken to stop an infringement of rights are ordered prior to proceedings on the merits, the applicant must take either civil or criminal action within 20 days with effect from the day following the day on which the measure is implemented. Otherwise, on application by the defendant, who is not required to provide reasons for his application, the measures ordered shall be cancelled, without prejudice to any damages that may be claimed.

Article 33

Seizure for counterfeiting

- (1) The prejudiced party may approach any bailiff, public officer or judicial officer, including customs officials, assisted if applicable by an expert, to prepare a detailed inventory with or without seizure, of the impugned objects or implements, following an order by the presiding judge of the competent domestic court within whose jurisdiction the operations shall be conducted, including at the border. Where necessary, the customs authorities shall immediately inform the applicant and the importer of the execution of the measures ordered.
- (2) The order shall be made on application, to which proof of registration of the industrial design is attached.
- (3) Where seizure is sought, the judge may require a security deposit from the applicant, which the applicant shall provide prior to causing the seizure to be effected.
- (4) A security deposit shall always be required of foreigners seeking a seizure.
- (5) A copy of the order shall be left with the custodians of the objects identified or seized and, if necessary, the document noting the provision of a security deposit, on pain of invalidity and damages against the bailiff, public officer or judicial officer, including the customs official.

Article 34

Time limit for initiating proceedings on the merits

Should the petitioner fail to institute criminal or civil proceedings within 10 working days of the seizure or inventory or the information provided by the customs authorities, such seizure or inventory shall *ipso jure* be void, without prejudice to any damages that may be claimed, if warranted.

PART V – PENALTIES

Article 35

Counterfeiting

- (1) Any infringement of the rights of the owner of the industrial design as set forth in Article 3 shall constitute counterfeiting.
- (2) Counterfeiting may be proven by all means.

Article 36

Penalties for infringement

Any knowing infringement of the rights enshrined in this Annex shall be punishable by imprisonment for one to three years and a fine of 5,000,000 to 30,000,000 CFA francs or one of these penalties alone, without prejudice to civil damages.

Article 37

Penalties for recidivism

- (1) In the event of recidivism or, if the defendant previously worked for the prejudiced party, the penalties provided for in Article 36 above shall be doubled.
- (2) Recidivism occurs where, within the five previous years, an offender has been convicted of one of the offenses provided for in this Annex.
- (3) The provisions of legislation in Member States regarding mitigating circumstances shall apply to offenses provided for in this Annex.

Article 38

Deprivation of electoral rights

- (1) In addition to the penalties provided for in Articles 36 and 37 above, the convicted persons may be deprived of the right to participate in elections to professional groups such as chambers of commerce and industry and chambers of trade for a period not exceeding 10 years.
- (2) The competent domestic court may order the posting of the judgement and its insertion in whole or as excerpts in the newspapers that it shall designate, all at the expense of the convicted person.

PART VI – BORDER MEASURES

Article 39

Measures on request

- (1) On written application by any person, supported by proof of his right, the customs administration may, when conducting inspections, detain any goods the applicant claims to be counterfeit.
- (2) The public prosecutor, the applicant and the importer of the goods shall be immediately informed by the customs services of such detention.

(3) The detention measure shall be lifted *ipso jure* within 10 working days of the notification of the detention of the goods if the applicant fails to provide proof to the customs services:

(a) either of the interim measures;

(b) or of his application to the competent national judge in either civil or criminal matters and the provision, where applicable, of the requisite guarantees to cover any liability he might incur where the alleged counterfeiting is not found to exist.

(4) For the purposes of taking the legal action referred to in the preceding paragraph, the applicant may obtain communication by the customs administration of the names and addresses of the sender, importer and intended recipient of the detained goods, together with their quantity, notwithstanding provisions governing professional secrecy by which customs officials are bound.

(5) On expiry of the 10-day time limit mentioned in paragraph (3) above, where the decision to suspend the free movement of goods is not taken by a judicial authority or by an independent administration, the owner, the importer or the intended recipient of the goods may, on payment of a security deposit, cause the suspension of the detention order.

Article 40

***Ex-Officio* action**

(1) The customs authorities may *ex officio* decide to retain suspect goods where they have *prima facie* evidence that such goods are counterfeit. The customs authorities may at any time request the owner of the title to provide any information that might assist them in exercising their powers.

(2) The owner of the right, the importer and the exporter shall be immediately informed of the detention.

(3) The liability of the customs authorities may be incurred in the event of unjustified detention, save where they acted in good faith.

Article 41

Transmission of materials to courts

Any court seized of a dispute may request the Organization to transmit copies of the graphical and photographic representations of a filed or registered industrial design.

Article 42

Defense of granted rights

(1) Any beneficiary of an exclusive contractual license may, by registered letter, call on the owner of a registered industrial design to bring the necessary legal action seeking civil or criminal penalties for any violation of the rights under the industrial design registration reported by the beneficiary.

- (2) If, within three months following the summons provided for in the preceding paragraph, the owner of the registered industrial design refuses or fails to bring the action referred to in the preceding paragraph, the registered licensee may institute them in his own name, without prejudice to the right of the owner of the registered design to intervene in the action.

PART VII – TRANSITIONAL AND FINAL PROVISIONS

Article 43

Continued validity of industrial designs registered or recognized under the Bangui Agreement, Act of February 24, 1999

Any industrial design registered or recognized under the Bangui Agreement of February 24, 1999 and its Annex IV shall remain in force for the term specified in this Agreement and by virtue of this article.

Article 44

Acquired rights

- (1) This Annex shall govern applications for the registration of industrial designs filed as from the date of its entry into force, subject to the rights acquired under Annex IV of the Bangui Agreement, Act of February 24, 1999.
- (2) Applications for the registration of industrial designs filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of those applications.
- (3) However, the exercise of the rights deriving from industrial design registrations granted under the provisions referred to in paragraph (2) above shall be governed by the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.
- (4) Annex IV of the Bangui Agreement, Act of February 24, 1999, is repealed.

ANNEX V
TRADE NAMES

Article 1

Definition

Within the meaning of this Annex, a trade name shall be the name under which a trade, industrial, craft, agricultural or other business establishment is known and exploited.

Article 2

Name or designation not admissible as a trade name

A name or designation shall not be admissible as a trade name if, by reason of its nature or the use to which it may be put, it is contrary to morality or public policy and if, in particular, it is liable to mislead trade circles or the public as to the nature of the trade, industrial, craft, agricultural or other establishment of that name.

Article 3

Right to the trade name

- (1)** Subject to the provisions hereafter, a trade name shall belong to the person having first made use of it or having first registered it.
- (2)** The use of a trade name may only be proved by written or printed matter or documents contemporaneous with the facts they seek to establish.
- (3)** Where a registered trade name has been publicly and continuously used on national territory for at least five years without having given rise to a legal action recognized as being well-founded, ownership of the trade name may not be challenged on the ground of priority of use, unless it can be proved that, at the time of the filing of the application for registration, the applicant could not have been unaware of the existence of the trade name of the initial user.

Article 4

Specific effects of registration of a trade name

Only trade names registered in accordance with the provisions of this Annex may be the subject of the criminal penalties specified in Article 18(3) and 18(5) below.

Article 5

Conditions for using trade names

- (1)** It shall be illegal to use on the territory of one of the Member States a trade name registered for the same trade, industrial, craft or agricultural activity as that of the owner of the registered trade name if such utilization is liable to create confusion between the establishments in question.
- (2)** Nevertheless, the registered owner of a trade name may not prevent third parties from the use in good faith of their names, their addresses, a pseudonym, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production of their goods or of the supply of their services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

- (3)** Where his rights to the trade name of his establishment are subsequent to those of the registered trade name, a person whose name and first name are similar to those of a registered trade name shall take all necessary measures, by an addition to his trade name or by any other manner, to distinguish his trade name from that of the registered trade name.
- (4)** The provisions of paragraphs (1), (2) and (3) above shall be applicable to any trade, industrial, craft or agricultural activity ensuing from the establishment in question, in so far as it has been registered.

Article 6

Filing of the application

- (1)** The owner of a trade, industrial, craft or agricultural enterprise situated on the territory of one of the Member States may secure the registration of the trade name of his establishment.
- (2)** The application for registration of the trade name shall be filed with the Organization or the Ministry responsible, in accordance with Article 8 of the Agreement and this Annex, according to the procedures fixed by the implementing regulations.
- (3)** The application file shall contain the following:
 - (a)** an application addressed to the Director-General of the Organization, containing the following information:
 - (i)** the surname, first name, address and nationality of the applicant;
 - (ii)** the trade name for which registration is sought; and
 - (iii)** the location and type of activity of the establishment in question;
 - (b)** a document proving payment to the Organization of the requisite fees; and
 - (c)** an unstamped private power of attorney, if the applicant is represented by an agent.

Article 7

Report of filing

- (1)** A report prepared by the Organization or the Ministry responsible shall note each filing and specify the date and time of submission of the documents.
- (2)** A copy of the report shall be issued to the applicant.
- (3)** Within five working days of the date of its filing, the Ministry responsible shall transmit the application to the Organization, attaching a copy of the report of filing, a document showing proof of payment of the fees and, where appropriate, the power of attorney mentioned in Article 6.

Article 8

Publication of the application

For every application for registration of a trade name, the Organization shall publish the following information:

- (a)** the filing number of the application;
- (b)** the filing date;
- (c)** the trade name and the location of the establishment;
- (d)** the company name or the surname, first name and address of the owner;
and
- (e)** the activities for which the registration of the trade name is sought.

Article 9

Opposition

- (1)** Any person may oppose the registration of a trade name by sending to the Organization, within three months of the publication mentioned in Article 8 above, a written statement setting out the reasons for his opposition, which must be based on an infringement either of the provisions of Articles 1, 2 and 5(1), or of a prior right belonging to the opposing party.
- (2)** The Organization shall send a copy of the statement of opposition to the applicant, who may submit a reasoned reply within three months, renewable once on the reasoned request of the applicant. If his reply does not reach the Organization by the prescribed time limit, the applicant shall be deemed to have withdrawn his application for registration and the registration shall be cancelled.
- (3)** Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4)** The Organization's ruling on the opposition shall be appealable before the High Commission of Appeal within 60 days of the notification of the decision to the parties.
- (5)** The registration shall only be cancelled in so far as the opposition is valid.

Article 10

Examination and registration of trade names

- (1)** For all applications for the registration of a trade name, once the Organization has ascertained that the trade name is not inconsistent with Article 2, that the filing is properly done and the requisite fees have been paid, it shall register and publish the trade name.
- (2)** The registration shall have effect as from the filing date.

- (3)** Any filing that fails to fulfill the requirements of Article 2 shall be rejected.
- (4)** Any filing that fails to comply with the formal requirements referred to in Article 6, save for the provision in sub-paragraph (b) thereof shall be irregular. Such irregularity shall be notified to the applicant or his agent, who shall be invited to provide the proper documents within three months of notification. This time limit may be extended by 30 days in case of justified necessity, on application by the applicant or his agent. The regularized application shall retain the date of the initial application.
- (5)** Where rectified documents are not produced within the prescribed time limit, the application for registration of the trade name shall be rejected.
- (6)** The rejection by the Director-General shall be notified to the applicant.
- (7)** No application may be rejected under paragraphs (3), (5) and (6) of this Article without affording the applicant or his agent the opportunity to rectify it to the extent and according to the procedures and forms prescribed.
- (8)** Notwithstanding the provisions of the preceding paragraphs, the Organization may correct obvious clerical errors contained in applications.
- (9)** Within 60 days of the date of notification of the rejection, the applicant may appeal to the High Commission of Appeal. The decision of the High Commission of Appeal shall not be appealable.

Article 11

Issuance of the certificate of registration

On completion of the registration, the owner of the registration shall be furnished with a certificate containing, in particular, the following information:

- (a)** the registration number of the trade name;
- (b)** the filing date and filing number of the application for registration and the date of registration;
- (c)** the trade name as registered;
- (d)** the location of the commercial establishment in question and the type of activity of the establishment; and
- (e)** the surname, first name and address of the owner of the registration.

Article 12

Publication of the registration of the trade name

For each registered trade name, the Organization shall publish the information stipulated in Article 11 above, together with the name and address of the agent, if applicable.

Article 13
Duration of rights

- (1)** The registration of a trade name shall be valid for only 10 years from the date of filing; however, the right afforded by registration of a trade name may be preserved indefinitely through successive renewals of the registration every 10 years.
- (2)** Renewal of a registration may be obtained on application by the owner of the registration, submitted during the final year of the 10-year period and on payment of a renewal fee whose amount shall be fixed by regulation.
- (3)** However, the owner of the registration shall enjoy a six-month period of grace as from the expiry referred to in paragraph (1) above to make valid payment of the required fee. In such case, he shall also be required to pay a surcharge laid down by regulation.

Article 14
Restoration

- (1)** Without prejudice to the provisions of Article 13 above, where the protection conferred by a registered trade name has not been renewed owing to circumstances beyond the control of the owner of the trade name, the owner or entitled persons may apply for its restoration on payment of the requisite renewal fee and of a surcharge whose amount shall be fixed by regulation, within six months of the date on which the circumstances ceased to exist, and no later than two years after the date on which renewal was due.
- (2)** The application for restoration of the trade name, together with documents proving payment of the fee and surcharge mentioned in the paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.
- (3)** Restoration shall not entail extension of the maximum duration of protection for the trade name.
- (4)** Restored trade names shall be published by the Organization in the format prescribed by the implementing regulations relating to this Annex.
- (5)** The rejection decision following the application for restoration shall be appealable before the High Commission of Appeal within 60 days of the notification of the rejection.

Article 15
Renunciation

The owner of a registered trade name may at any time renounce the trade name by a written declaration sent to the Organization. The renunciation shall take effect on the date on which it is entered in the special register of trade names.

Article 16

Invalidity of trade names

- (1)** The competent domestic courts shall declare the invalidation of the effects of the registration of a trade name on the territory of one of the Member States on application either by the Office of the Public Prosecutor or of any interested natural or legal person.
- (2)** On application by the interested parties referred to above or by the Organization, the court shall declare the registration of a trade name invalid if it is not consistent with the provisions of Articles 1, 2 and 5(1) above or conflicts with a prior right; in the event of such conflict, invalidity may only be declared on application by the owner of the prior right.
- (3)** When the decision declaring the registration invalid becomes final, it shall be notified to the Organization, which shall enter it in the special register of trade names.
- (4)** Invalidity shall be published in the format laid down in the implementing regulations of this Annex. The registration shall be deemed invalid as of the date on which it occurs.

Article 17

Transfer of trade names

- (1)** A trade name may be assigned or transferred only with the trade, industrial, craft or agricultural establishment, or with the part of such establishment designated under the trade name.
- (2)** The assignment of a trade name shall be in writing and shall require the signatures of the contracting parties. Transfers by merger of trade, industrial, craft or agricultural establishments or any other form of succession may be done by any other document proving such transfer.
- (3)** The acts referred to in paragraph (1) above shall only be enforceable against third parties if they have been entered in the special register of trade names maintained by the Organization and published in the format laid down by the implementing regulations relating to this Annex. A copy of such acts shall be kept by the Organization.

Article 18

Legal action and penalties

- (1)** Where the rights attaching to a trade name are threatened with infringement, the owner of such rights may initiate any legal action intended to prevent such infringement.
- (2)** Should the infringement of rights referred to in paragraph (1) above occur, the owner of the rights may prohibit continuation of the infringement and request the payment of damages and any other penalties provided for by civil law.
- (3)** Without prejudice to any damages, if applicable, a person who has affixed or caused to appear, by suppression or by any alteration whatsoever on manufactured articles, the name of a manufacturer or craftsman other than the originator, or the trade name of an establishment other than that in which the articles were made, shall be liable to

punishment by imprisonment of three months to one year and by a fine of 5,000,000 to 15,000,000 CFA francs, or by one of these penalties alone.

- (4)** The court seized of the matter shall determine the amount of the damages, taking into account the adverse financial effects, including loss of earnings, suffered by the prejudiced party, the profits made by the perpetrator of the infringement and the moral damage caused to the owner of the right as a result of the infringement.
- (5)** Any person who knowingly displays for sale or placed on the market articles marked with fictitious or falsified names shall be liable to the same punishment as that specified in paragraph (3) above.

Article 19

Scope

The provisions of this Annex shall be applicable to any trade, industrial, craft or agricultural establishment, subject to the special provisions applicable elsewhere to such establishments.

Article 20

Continued validity of trade names registered or recognized under the Bangui agreement, Act of February 24, 1999

Any trade name registered or recognized under the Bangui Agreement, Act of February 24, 1999 and its Annex V shall remain in force for the term specified in that Agreement by virtue of this article.

Article 21

Acquired rights

- (1)** This Annex shall apply to trade name applications made as from the day of its entry into force, subject to the rights acquired under Annex V of the Bangui Agreement, Act of February 24, 1999.
- (2)** Applications for the registration of trade names filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of those applications.

ANNEX VI
GEOGRAPHICAL INDICATIONS

PART I – GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex:

- (a)** "geographical indication" means an indication that serves to identify a product as originating from a place, a region, or a country, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin;
- (b)** "product" means any natural, agricultural, craft or industrial product;
- (c)** "producer" means:
 - (i)** farmers or any other person exploiting natural products;
 - (ii)** manufacturers of products of craft or industry;
 - (iii)** processors of natural or agricultural products; and
 - (iv)** any person who trades such products.

Article 2 Trans-border geographical indications

A geographical indication may concern two or more States.

Article 3 Marks containing a geographical indication

- (1)** Registration of a trademark containing or imitating a geographical indication, or constituted by such indication or imitation, shall be refused or invalidated if the use of the indication in the trademark for such products is likely to mislead the public as to the true place of origin.
- (2)** Likewise, registration of a geographical indication which, although literally accurate with respect to the territory, region or locality from which the products originate, shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

Article 4 Conditions governing protection

Geographical indications shall be protected as such if they have been registered by the Organization, or are to be treated as having been registered by virtue of an international convention to which the Member States or Organization are party.

Article 5

Geographical indications excluded from protection

The following shall not be protected as geographical indications:

- (a) indications that do not correspond to the definition in Article 1(a);
- (b) indications that are contrary to public policy or morality or those which, in particular, are likely to deceive the public, in particular as to the nature, source, manufacturing process, characteristic qualities or suitability for their purpose of the goods concerned;
- (c) indications that are not protected in their country of origin or have ceased to be protected in that country.

Article 6

Rights conferred by the registration of a geographical indication

- (1) Registration of a geographical indication confers on the producers referred to in Article 1 above, who perform their activities in the geographical area indicated in the register, the right to use for commercial purposes the registered geographical indication in respect of the product enumerated in the register, provided that such products possess the essential characteristics recorded in the register.
- (2) Where the products have been put into circulation in the conditions set forth in paragraph (1) above under a registered geographical indication, any person may use the geographical indication for those products.
- (3) Aside from the instances provided for in paragraphs (1) and (2) above, it shall be illegal to make any use of the registered geographical indication or a similar appellation for products listed in the register or similar products, even if the real origin of the product is stated, or if the geographical indication is used in translation, or accompanied by expressions such as sort, type, way, imitation or similar expressions.
- (4) It shall be illegal to use in the designation or presentation of a product any device that indicates or suggests that the product in question originates from a geographical region other than the actual place of origin, in a manner that misleads the public as to the geographical origin of the product.
- (5) The owner of a prior identical or similar mark to a geographical indication may continue to use his mark, save where the mark concerns agricultural, natural or craft products.

Article 7

Entitlement to file an application

- (1) Legal persons operating as producers in the geographical region indicated in the application and groups of such persons and any competent authority shall be entitled to file an application for registration of a geographical indication.

- (2)** Exceptionally, the application may be filed by a natural person under the conditions fixed by the implementing regulations.

PART II – FILING, REGISTRATION AND PUBLICATION

Article 8

Filing of the application

- (1)** The application for registration of a geographical indication shall be filed with the Organization or the Ministry responsible for industrial property, in accordance with Article 8 of the Agreement, this Annex and the procedures set forth in the implementing regulations.
- (2)** The application file shall contain the following documents:
- (a)** an application addressed to the Director-General of the Organization;
 - (b)** a document proving payment to the Organization of the filing fee;
 - (c)** the geographical indication;
 - (d)** a reasoned notice of validation of the geographical indication by the competent Ministry of the State of origin of the geographical indication;
 - (e)** the specifications, containing in particular the following:
 - (i)** the applicant;
 - (ii)** the name of the producer;
 - (iii)** the type of product;
 - (iv)** the specifications of the product, setting out in particular the quality, reputation or other characteristics of the products for which the indication is used;
 - (v)** the delimitation of the geographical area;
 - (vi)** the breeding method;
 - (vii)** the link to the origin;
 - (viii)** the inspection plan; and
 - (ix)** the labelling;
 - (f)** the articles of association of the group of producers, if applicable;
 - (g)** the agent's power of attorney, if applicable; and

(h) proof of registration of the geographical indication in the country of origin, for foreign geographical indications.

Article 9

Filing of applications for trans-border geographical indications

- (1)** Where a trans-border geographical indication concerns one or more Member States of the Organization:
- (a)** each of the States concerned may file its application with the Organization; and
 - (b)** all the States concerned may file a joint application.
- (2)** If the trans-border geographical indication concerns one or more Member States of the Organization and one or more third-party States members of the Lisbon Agreement, Act of May 20, 2015, all the States concerned may file a common application pursuant to the Lisbon Agreement.
- (3)** In the cases referred to in sub-paragraphs 1(a) and 1(b) above, the application file shall also contain the authorization to apply for protection issued by the competent Ministry in each of the States concerned.

Article 10

Report of filing

- (1)** A report prepared by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.
- (2)** A copy of the report shall be issued to the applicant.
- (3)** The Ministry responsible for industrial property shall transmit the documents to the Organization within five working days of the date of filing.

Article 11

Publication of the application

The Organization shall publish the following information for each application for registration of a geographical indication:

- (a)** the number of the application;
- (b)** the filing date;
- (c)** the reproduction of the geographical indication;
- (d)** the name of the product;
- (e)** the type of product;
- (f)** the name of the applicant and his address;

- (g) any beneficiary producer's groups;
- (h) the geographical origin;
- (i) the delimitation of the geographical area; and
- (j) the name and address of the agent, if applicable.

Article 12 Opposition

- (1) Any person may oppose the registration of a geographical indication by sending to the Organization, within three months of the publication mentioned in Article 10 above, a written statement setting out the reasons for his opposition, which reasons must be based on an infringement either of the provisions of Articles 1, 3, 5 and 7 of this Annex, or of a prior registered right belonging to the opposing party.
- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may submit a reasoned reply within three months, renewable once on request. The reply shall be forwarded to the opponent or his agent.
- (3) Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4) The Organization's ruling shall be appealable before the High Commission of Appeal within 60 days of receipt of the notification of the ruling to the parties concerned.
- (5) If the opposition is well-founded, the Organization shall reject the application for registration.
- (6) The final forfeiture ruling shall be published in the Official Bulletin of the Organization.

Article 13 Amendment of the application

- (1) An application for the registration of a geographical indication may be amended on request by the applicant under the following conditions:
 - (a) until the ruling on the registration of the geographical indication;
 - (b) during any proceedings for opposition of the registration of the geographical indication; and
 - (c) during any appellate proceedings concerning the ruling on the opposition of the registration of the geographical indication.
- (2) The application may only be amended in respect of the beneficiaries and the delimitation of the geographical area.
- (3) The amended application shall retain the filing date of the initial application.

(4)A fee shall be payable for any request for amendment.

Article 14

Examination of the application for registration

- (1)**For every application for registration of a geographical indication, the Organization shall examine whether the applicant is entitled to apply for registration, whether the application contains the particulars required under Articles 8 and 9 of this Annex and whether the prescribed fees have been paid.
- (2)**Where the applicant lacks the status to apply for registration or where the prescribed fees have not been paid, the application shall be rejected.
- (3)**Where the application does not contain the particulars required under Article 8, with the exception of the requirement under sub-paragraph 2(b), the application shall be deemed irregular. The irregularity shall be notified to the applicant or his agent with an invitation to regularize the documents within three months as from the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his agent. An application thus regularized within the prescribed time limits shall retain the date of the original application. Failing regularization of the application within the prescribed time limits, the application shall be rejected.
- (4)**Where the requirements of paragraph (1) are fulfilled, the geographical indication shall be registered in the special register of geographical indications.
- (5)**No filing may be rejected under paragraph (3) of this Article unless the applicant or his agent have been afforded the opportunity to correct such application to the extent and in accordance with the prescribed procedures and form.
- (6)**Notwithstanding the provisions of the preceding paragraphs, the Organization may itself correct any obvious material defects contained in applications.
- (7)**An applicant may lodge an appeal before the High Commission of Appeal within 60 days of the rejection of his application.

Article 15

Issuance of the certificate of registration

- (1)**On registration, a certificate of registration containing the following information shall be prepared and issued to the owner of the registration:
- (a)**the registration number of the geographical indication;
 - (b)**the filing number of the application for registration;
 - (c)**the filing date the application for registration;
 - (d)**a reproduction of the geographical indication;

- (e) the name and address of the owner;
 - (f) the beneficiary producers, if applicable;
 - (g) the status of the owner;
 - (h) the area of production; and
 - (i) the products to which the geographical indication applies.
- (2) The Organization shall attach to the certificate a copy of the specifications of the geographical indications, bearing the registration number.

Article 16

Publication of the registration

- (1) For each certificate of registration issued, the Organization shall publish the information referred to in Article 15 above, together with the name and address of the agent, if applicable.
- (2) The Organization shall also publish an excerpt of the specifications for each registration of a geographical indication.
- (3) The implementing regulations shall fix and determine the procedures of publication.

Article 17

Term of protection

Subject to compliance with the specifications, the protection conferred on a geographical indication shall be of unlimited duration.

Article 18

Access to information in the special register

At any time after the publication of the application for registration or the registration of the geographical indication, any person may, on written application and submission of the requisite fee, obtain information, excerpts or copies of the entry in the special register.

Article 19

Modification of registration of a geographical indication

- (1) The modification may concern, *inter alia*, the specification of the product, the restriction or the extension of the geographical indication or the producers of the product.
- (2) Any amendment resulting in a dilution of the link between the product and its region of origin shall be inadmissible.
- (3) The application for amendment shall describe the amendments sought and the reasons. It shall consist of deletions or additions to the specifications.
- (4) The application file shall contain the following documents:
- (a) the application for amendment of the protected geographical indication;

- (b) the amended specifications; and
- (c) a document proving payment of the amendment fee.

PART III – INSPECTION, CIVIL AND CRIMINAL ACTION

Article 20

Inspection

- (1) Quality control of the products offered for sale or exploited under a registered geographical indication and the prohibition from using the geographical indication shall be determined by regulations issued by the Ministry responsible in the Member State concerned.
- (2) Regulations shall fix the procedures for inspection of the use of the logos of protected geographical indications originating from Member States of the Organization.

Article 21

Invalidity and amendment of the registration

- (1) Any person or the Ministry responsible may request the competent domestic court to order the following:
 - (a) cancellation of the registration of a geographical indication on the grounds that, having regard to Article 5, the registration as such may not be afforded such protection;
 - (b) amendment of the registration of a geographical indication on the grounds that the geographical region named in the registration does not correspond to the geographical indication, or that the names of the products for which the geographical indication is used or the statement of quality, reputation or other specification of the products in question is defective or unjustified;
 - (c) amendment of the specifications.
- (2) For any action brought under this article, notice of the application for invalidity or amendment shall be given to the person who filed the application for registration of the geographical indication or his successor in title and shall be communicated, by publication in the manner prescribed by the implementing regulations of this Annex, to all persons entitled to use the geographical indication in accordance with Article 6 above.
- (3) The persons mentioned in paragraph (2) above and any other person may make a request to intervene within the time limit fixed by the court of a Member State in the above-mentioned notice and publication.

- (4)**When the decision finding the registration null and void becomes final, it shall be communicated by the most diligent party to the Organization, which shall enter it into the special registry of geographical indications and publish a notice to that effect.
- (5)**Invalidity shall be published in the formats prescribed by the implementing regulations. The registration shall be considered null and void with effect from the date of the registration.

Article 22

Other civil action

- (1)**Any interested person or group of producers or consumers may bring the action provided for in paragraph (2) against unlawful use of a registered geographical indication and against persons contributing to such use within the meaning of Article 6(3) and 6(4).
- (2)**Without prejudice to paragraph (3), the action shall be intended to end the unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication, or to prohibit such use where it is imminent, and to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use.
- (3)**Any person who has suffered damage as a result of the unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication may require compensation from the person making unlawful use of the indication and persons who have contributed to such use.
- (4)**In determining the damages, the competent domestic court shall take into account the adverse financial effects, including loss of earnings, suffered by the injured party, the profits made by the counterfeiter and the moral damage caused to the owner of the rights as a result of the infringement.

Article 23

Criminal action

Any person intentionally making unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication shall be punishable by a term of imprisonment of three months at least and one year at most and to a fine ranging from 5,000,000 to 30,000,000 CFA francs, or one only of these penalties.

Article 24

Penalties in aggravating circumstances

- (1)**The penalties stipulated in Article 23 above shall be doubled in the following cases:
- (a)**recidivism;
 - (b)**where the defendant is a member of the group representing the geographical indication;
 - (c)**if the defendant is an employee of such group.

(2) Recidivism occurs where an offender has been convicted of one of the offenses provided for in this Annex within the five previous years.

PART IV – TRANSITIONAL AND FINAL PROVISIONS

Article 25

Acquired rights

- (1) This Annex shall apply to applications for protection of geographical indications filed as from the date of its entry into force, subject to the rights acquired under Annex VI of the Bangui Agreement, Act of February 24, 1999.
- (2) Applications for registration of appellations of origin filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.
- (3) However, the exercise of the rights deriving from appellations of origin registered under the provisions referred to in paragraph 2 above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

Article 26

Final provision

Annex VI of the Bangui Agreement, Act of February 24, 1999, is repealed.

ANNEX VII
LITERARY AND ARTISTIC PROPERTY

PART I – COPYRIGHT

CHAPTER 1 – GENERAL PROVISIONS

Article 1

Definitions

The following terms as used in this Annex shall have the following meanings:

- (i)** “work” means any literary or artistic creation within the meaning of Article 4 below;
- (ii)** “audiovisual work” means a work consisting of a series of related images giving an impression of movement, whether or not accompanied by sounds;
- (iii)** “work of applied art” means a two-dimensional or three-dimensional artistic creation having a utilitarian function or embodied in a utilitarian article, whether a work of handicraft or a work produced by industrial processes. “Utilitarian article” means an article fulfilling an intrinsic utilitarian function not consisting solely of presenting the appearance of an article or transmitting information;
- (iv)** “work of joint authorship” means a work in whose creation two or more authors have collaborated;
- (v)** “collective work” means a work created at the initiative of a natural or legal person who discloses it under his direction and name and in which the individual contributions of the various authors participating in its creation merge in the whole for which it was created, so that it is impossible to attribute to each of them a separate right in the whole work once completed;
- (vi)** “composite work” means a new work in which a preexisting work is incorporated without the collaboration of the “author” of the preexisting work;
- (vii)** “photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, whatever the nature of the technology (chemical, electronic or other) through which the recording is made. A still image extracted from an audiovisual work shall not be deemed a photographic work, but a part of the audiovisual work concerned;
- (viii)** “author” means the natural person who has created a work;
- (ix)** “producer of a work” means the natural or legal person who takes the initiative and assumes the responsibility for creating such work;

(x) "broadcasting" means the communication of sounds or images and sounds to the public by wireless;

"broadcasting" encompasses broadcasting by satellite, which means broadcasting from the injection of a work towards a satellite, including both the uplink and downlink in the transmission, to the point where the work is communicated to the public;

The transmission of encrypted signals is similar to "broadcasting" when the means of decryption are provided to the public by the broadcasting organization or with its consent;

(xi) "rebroadcasting" means the emission of a broadcast work;

(xii) "communication of a work to the public" (including its presentation, performance or broadcasting) means the fact of making a work accessible to the public by means other than the distribution of copies. Any process required to make a work accessible to the public, and which so permits, shall be a "communication" and a work shall be deemed "communicated to the public" even if nobody in the public for which the work is intended actually receives it, sees it or hears it;

(xiii) "public communication by cable" means the communication of a work to the public by wire or any other means constituted by a material substance. "Communication to the public" means the transmission by wire or wireless means of the images, sounds, or images and sounds of a work in such a way that they may be perceived by persons outside the family circle or the immediate circle of friends in one or more places sufficiently distant from the place of origin of the transmission that, without such transmission, the images or the sounds cannot be perceived in such place, irrespective of whether those persons may perceive the images or the sounds in the same place and at the same time, or in different places and at different times;

(xiv) "public performance" means the fact of reciting, playing, dancing or otherwise performing a work either directly or through any device or process or, in the case of an audiovisual work, of showing the images in sequence or of making the accompanying sounds audible in one or more places where persons outside the family circle or the immediate circle of friends are or may be present, irrespective of whether they are or may be present in the same place and at the same time or in different places and at different times, where the performance may be perceived without there necessarily being communication to the public within the meaning of the preceding paragraph;

(xv) "published" means that copies of the work have been made accessible to the public with the consent of the author, by sale, rental or

public lending or by any other transfer of ownership or possession, on condition that, taking into account the nature of the work, the number of such published copies is sufficient to meet the normal needs of the public. A work shall also be considered "published" if it has been stored in the memory of a computer system and made accessible to the public by any means of retrieval;

(xvi) "reproduction" means the making of one or more copies of a work or of a part of such work in any form whatsoever that enable it to be communicated to the public by indirect means;

It may be effected *inter alia* by printing, drawing, engraving, photography, molding and all graphical and plastic art processes, mechanical, cinematographic or magnetic recording;

For architectural works, "reproduction" also consists of the repeated execution of a master plan or model;

(xvii) "reprographic reproduction" of a work means the making of facsimile copies of originals or copies of a work by means other than painting, in particular by any photographic or similar process, including photocopying, printing, digitization and storage in databases or information systems;

(xviii) "copy" means the outcome of any act of reproduction of a work already fixed on a medium;

(xix) "computer program" means a set of instructions expressed in words, codes, schemes or any other form capable, once incorporated in a machine-readable medium, of performing a task or obtaining a particular result by means of a computer or by an electronic process capable of processing information;

(xx) "database" means a compilation of data or of facts;

(xxi) "public lending" means the transfer of possession of the original or of a copy of a work for a limited period of time, for non-profit-making purposes, by an institution providing services to the public, such as a public library or public records;

(xxii) "rental" means the transfer of possession of the original or a copy of a work for a limited period of time, for profit-making purposes;

(xxiii) "distribution" is the offering for sale or rent or any other act of putting into circulation, for valuable consideration, of the original or copies of a literary or artistic work;

(xxiv) "entertainment promoter" is any natural or legal person who

occasionally or on an ongoing basis performs protected works or causes them be performed, by any means whatsoever, in an establishment that admits the public;

(xxv) “accessible format copy” means a copy of a work in an alternative manner or form which gives a person with visual impairment access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability;

(xxvi) “authorized entity” means an entity that is authorized or recognized by the government of a Member State to provide education, instructional training, adaptive reading or information access to persons who are blind, visually impaired or otherwise print disabled on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to such persons as one of its primary activities or institutional obligations;

(xxvii) “visually impaired” means a person who is blind or has a visual impairment, a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability, or is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

Article 2

Scope

(1) The provisions of this part of the Annex shall apply to the following:

(i) works of which the author or any other original holder of copyright is a national of one of the Member States of the Organization or has his habitual residence or headquarters in such State;

(ii) works published for the first time on the territory of one of the Member States of the Organization or published for the first time in a foreign country and also published in one of the Member States of the Organization within 30 days; and

(iii) works of architecture erected in one of the Member States of the Organization.

(2) In the case of a work of joint authorship, it shall suffice for one of the joint authors to meet the requirements of paragraph (1)(i) above in order that the provisions of this part of the Annex apply.

(3) The relevant provisions of the Agreement Revising the Bangui Agreement, Act of February 24, 1999, shall apply *mutatis mutandis* to this part of the Annex.

(4) The provisions of international treaties shall remain unaffected.

CHAPTER II – SUBJECT MATTER OF PROTECTION

Article 3

General provisions

(1) The author of any original work of the mind shall enjoy, by the mere fact of its creation, an exclusive incorporeal property right in the work which shall be enforceable against all persons. This right shall encompass intellectual and moral attributes as well as economic attributes, as determined by this Annex.

(2) The protection deriving from the rights laid down in paragraph (1), hereinafter referred to as "protection", shall begin with the creation of the work.

The work shall be taken to be created independently of any fixing on a material medium and any disclosure, by the mere fact of the personal embodiment, even if incomplete, of the author's conception.

Created works shall include photographic works or any other work resulting from a creation made with the aid of an automatic process.

Article 4

Works

(1) This Annex shall apply to literary and artistic works, hereinafter referred to as "works", constituting original creations of the mind in the literary, artistic and scientific fields, such as:

(i) works expressed in writing, including computer programs;

(ii) lectures, addresses, sermons and other works composed of words and expressed orally;

(iii) musical works, whether or not accompanied by words;

(iv) dramatic and dramatico-musical works;

(v) choreographic works and mimed works;

(vi) audiovisual works;

(vii) works of fine art such as drawings, paintings, sculptures, engravings and lithographs;

(viii) works of architecture;

(ix) photographic works;

(x) works of applied art;

(xi) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science; and

(xii) traditional cultural expressions.

(2) Protection shall be independent of the mode or form of expression, of the quality and of the purpose of the work.

Article 5

Derivative works and collections

(1) The following shall also be protected as works:

(i) translations, adaptations, arrangements and other transformations of works and of expressions of folklore; and

(ii) collections of works, of expressions of folklore or of simple facts or data, such as encyclopedias, anthologies and databases, whether reproduced on a medium that may be processed by a machine or in any other form, which, by reason of the selection, coordination or arrangement of their contents, constitute creations of the mind.

(2) The protection of the works referred to in paragraph (1) above shall not affect the protection of existing works used in the making of such works.

Article 6

Subject matter not protected

The protection afforded by this part of the Annex shall not extend to the following:

(i) official texts of a legislative, administrative or judicial nature or to their official translations;

(ii) news of the day; and

(iii) simple facts and data.

CHAPTER III – PROTECTED RIGHTS

Article 7

Moral rights

(1) Independently of his economic rights and even after assignment of such rights, the author of a work shall have the right:

(i) to claim authorship of his work, in particular the right to have his name affixed to copies of his work and, wherever possible and in the usual manner, in relation to any public use of his work;

(ii) to remain anonymous or to use a pseudonym;

(iii) to oppose any distortion, mutilation or other modification of his work or any other action derogatory to it where such action might be prejudicial to his honor or reputation.

(2) An author shall have the exclusive right to disclose his work. He shall determine the disclosure process and lay down the conditions.

(3) An author shall enjoy a right to reconsider or of withdrawal, even after publication of his work, with respect to the assignee. However, he may only exercise such right on condition that he indemnify the assignee beforehand for any prejudice caused by the reconsideration or withdrawal. If the author decides to have his work published after having exercised his right to reconsider or of withdrawal, he shall be required to offer his rights of exploitation in the first instance to the assignee he originally chose and under the conditions originally determined.

(4) The moral right is vested in the person of the author. It is perpetual, inalienable, not subject to limitations of time and indefeasible. It is transferable after death to heirs.

(5) The exercise of the moral right may be transferred to a third party through testamentary dispositions.

Article 8

Economic rights

(1) An author shall enjoy the exclusive right to exploit his work in any form whatsoever and to obtain monetary advantage therefrom. Subject to the provisions of Articles 10 to 24, the author of a work shall enjoy, in particular, the exclusive right to perform or authorize the following acts:

(i) reproduction of his work;

(ii) translation, adaptation, arrangement or other transformation of his work;

(iii) distribution of copies of his work to the public by means of sale or any other transfer of ownership or by rental or lending; and

(iv) public performance of his work.

(2) The rental right referred to in paragraph (1)(iii) shall not apply to the rental of computer programs where the program itself is not the essential subject matter of the rental.

Article 9

Resale royalty

- (1) Regardless of any transfer of the original work, authors of graphic and three-dimensional works, and of manuscripts, shall have an inalienable right to participate in the proceeds of any sale of such work or manuscript by public auction or through a dealer, whatever the conditions under which the transaction was carried out by the dealer.
- (2) The above provision shall not apply to works of architecture or to works of applied art.
- (3) The conditions for exercising such right and the rate of participation in the proceeds of sale shall be determined by the competent national authority.

CHAPTER IV – LIMITATIONS TO ECONOMIC RIGHTS

Article 10

Free reproduction for private purposes

- (1) Notwithstanding the provisions of Article 8, and subject to those of paragraph 2 of this article, it shall be permitted to reproduce a lawfully published work exclusively for the private use of the user without the consent of the author and without payment of remuneration.
- (2) Paragraph (1) shall not apply to the following:
 - (i) the reproduction of works of architecture in the form of buildings or other similar constructions;
 - (ii) the reprographic reproduction of an entire book, works of fine art, or a graphical presentation of musical works, and exercise manuals and other publications used once only;
 - (iii) the reproduction of the whole or of significant parts of databases;
 - (iv) the reproduction of computer programs, except in the cases provided for in Article 17;
 - (v) copies of software other than the backup copy; and
 - (vi) any other reproduction of a work that would prejudice the normal exploitation of the work or would cause unwarranted prejudice to the legitimate interests of the author.

Article 11

Free reproduction in the form of quotation

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of a remuneration, to quote a lawfully published work in another work, on condition that the source and the name of the author are stated, if the name of the author is given in the source, and on condition that such quotation is compatible with fair practice and that its extent does not exceed that justified by the intended purpose.

Article 12

Free use for teaching

Notwithstanding the provisions of Article 8 above, it shall be permitted, without the consent of the author and without payment of remuneration, but subject to the requirement of stating the source and the name of the author if such name is given in the source, to use a lawfully published work as an illustration in publications, broadcasts or sound or visual recordings intended for teaching.

Article 13

Reprographic reproduction by libraries and archive services

Notwithstanding the provisions of Article 9, a library or archive service whose activities are not directly or indirectly profit-making may, without the consent of the author or other holder of copyright, make individual copies of a work by means of reprographic reproduction:

- (i) where the making of such copies is for the purpose of preserving and, if necessary, in the event of it having been lost, destroyed or made unusable, replacing them, or for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service; and
- (ii) where the reproduction of such a work is for the purpose of preservation or intended to preserve the conditions for its consultation for research or private study by individuals on the premises of establishments and on dedicated terminals of libraries that are open to the public, by museums or by archival services, provided that they seek no economic or commercial benefits.

Article 14

Free reproduction for judicial and administrative purposes

Notwithstanding the provisions of Article 8, it shall be permitted to reproduce a work intended for a judicial or administrative procedure to the extent justified by the intended purpose without the consent of the author and without payment of remuneration.

Article 15

Free use for informatory purposes

Notwithstanding the provisions of Article 8, it shall be permitted, subject to the requirement of stating the source and the name of the author if such name is given in the source, without the consent of the author and without payment of remuneration to perform the following acts:

- (i) reproduce in the press or by audiovisual means an economic, political or religious article published in newspapers or periodicals, or a broadcast work of like nature, in those cases where the right of reproduction, broadcasting or communication to the public has not been expressly reserved;
- (ii) to reproduce or make available to the public, for the purposes of reporting on current events by means of photography,

cinematography, or through broadcasting or communication to the public by cable, a work seen or heard during such event, to the extent justified by the intended informatory purpose; and

- (iii) to reproduce in the press, to broadcast or communicate to the public political speeches, lectures, addresses, sermons or other works of like nature given in public, as also pleadings made in legal proceedings, for the purposes of information and to the extent justified by the intended purpose, unless the authors of such works have expressly reserved their rights.

In any event, authors shall retain the exclusive right to publish collections of such works.

Article 16

Free use of the images of works permanently located in public places

Notwithstanding the provisions of Article 8, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce, broadcast or communicate to the public by cable an image of a work of architecture, a work of fine art, a photographic work or a work of applied art that is permanently located in a place open to the public, except if the image of the work is the main subject of such reproduction, broadcast or communication and if it is used for profit-making purposes.

Article 17

Free use and adaptation of computer programs

(1) Notwithstanding the provisions of Article 8, the lawful user of a copy of a computer program may, without the consent of the author and without payment of separate remuneration, make a copy or an adaptation of the program on condition that such copy or such adaptation be:

- (i) necessary for the use of the computer program for the purposes for which the program was obtained; or
- (ii) necessary for the purpose of archiving and in order to replace a lawfully held copy where such copy has been lost, destroyed or rendered unusable.

(2) No copy or adaptation may be made for purposes other than those set out in paragraph (1) above and any copy or adaptation shall be destroyed where the prolonged possession of the copy of the computer program ceases to be lawful.

Article 18

Free ephemeral recording by broadcasting organizations

Notwithstanding the provisions of Article 8, a broadcasting organization may make an ephemeral recording by means of its own facilities and for the purposes of its own broadcasts of a work it is authorized to broadcast, without the consent of the author and without payment of separate remuneration. The broadcasting organization shall destroy

such recording within six months of it having been made, unless a longer period has been agreed with the author of the work thus recorded.

However, in the absence of an agreement, a single copy of the registration may be kept for the exclusive purposes of record-keeping.

Article 19

Free performance

Notwithstanding the provisions of Article 8, a work may be publicly performed without the consent of the author and without payment of remuneration in the following circumstances:

- (i) within a family circle, provided such performance generates no income of any kind;
- (ii) at official ceremonies to the extent justified by the nature of the ceremonies;
- (iii) at religious ceremonies on premises intended for that purpose; and
- (iv) as part of the activities of a teaching establishment.

Article 20

Importing for personal purposes

A natural person may import a copy of a work for personal purposes without the consent of the author or of any other holder of the copyright in the work.

Article 21

Parody, pastiche and caricature

Notwithstanding the provisions of Article 8, a parody, pastiche or caricature of the work may be created without the consent of the author and without payment of remuneration, having regard to the laws governing the genre.

Article 22

Free use of works for the visually impaired

- (1) Where the literary work is published or made available to the public in any form whatsoever, the author may not prohibit access by means of reproduction, distribution, or making available to a visually impaired person.
- (2) The access referred to in this article shall be achieved where the visually impaired person, an authorized entity or the person's primary caretaker or caregiver makes a special format allowing easy enjoyment of the work, provided that the person making the format has lawful access to the work or a copy of the work.
- (3) The limitation provided for in this article shall enable the visually impaired person, the authorized entity or the primary caretaker or caregiver to supply by all available means, including by non-commercial lending or by electronic communication by wire

or wireless means, accessible format copies to a visually impaired person or an authorized entity located in a foreign country.

(4) Each Member State may establish compensatory remuneration for the free use provided for in this article.

Article 23

Free provisional reproduction

Notwithstanding the provisions of Article 8, a transitory or accessory reproduction may be made without the authorization of the author or payment of remuneration where it is an integral and essential part of a technological process with the sole goal of enabling the lawful use of the work or its transmission among third parties through a network requiring an intermediary. Nonetheless, such provisional reproduction, which may only pertain to works other than software and databases, shall not have an intrinsic financial value.

Article 24

Exhaustion of distribution rights

On authorization of the first sale of one or more hard copies of a work by the author or his successors in title in the territory of a Member State of the Organization or another third-party State, the sale of such copies of the work may no longer be prohibited.

Article 25

Scope of exceptions

The exceptions set forth in this part may not impair the normal exploitation of the work or be unjustly prejudicial to the legitimate rights of the author.

CHAPTER V – TERM OF PROTECTION

Article 26

General provisions

Except as otherwise provided in this chapter, the economic rights in a work shall be protected during the lifetime of the author and for 50 years after his death.

The moral rights shall be without limit in time. After the expiry of protection of the economic rights, the national collective rights management body shall be entitled to ensure compliance with the moral rights for the benefit of the authors.

Article 27

Term of protection for works of joint authorship

The economic rights in a work of joint authorship shall be protected during the lifetime of the last surviving author and for 50 years after his death.

Article 28

Term of protection for anonymous and pseudonymous works

The economic rights in a work published anonymously or under a pseudonym shall be protected for 50 years as from the end of the calendar year in which such work has been lawfully published for the first time or, failing such event occurring during the 50 years following the

making of the work, 50 years as from the end of the calendar year in which such work was lawfully made accessible to the public or, failing such event occurring during the 50 years following the making of the work, 50 years as from the end of the calendar year of its making, save where, prior to the expiry of such periods, the identity of the author is disclosed or leaves no doubt, in which case the provisions of Article 26 or Article 27 shall apply.

Article 29

Term of protection for collective and audiovisual works

The economic rights in a collective work or in an audiovisual work shall be protected for 50 years as from the end of the calendar year in which such work has been lawfully published for the first time or, failing such event occurring during the period of 50 years as from the making of the work, 50 years as from the end of the calendar year in which such work was made accessible to the public or, failing such event occurring during the period of 50 years as from the making of the work, 50 years as from the end of the calendar year of its making.

Article 30

Term of protection for works of applied art

The economic rights in a work of applied art shall be protected for 25 years as from the making of such work.

Article 31

Calculation of terms

The time limits provided for in this chapter shall expire at the end of the calendar year during which they would normally lapse.

CHAPTER VI – OWNERSHIP OF RIGHTS

Article 32

General principle

The author of a work shall be the first owner of the moral and economic rights in his work.

Article 33

Ownership of rights in works of joint authorship

- (1)** The joint authors of a work of joint authorship shall be the first joint owners of the copyright in that work.
- (2)** Unless otherwise contractually agreed by the joint authors, if a work of joint authorship may be divided into independent parts, each joint author shall be free to exploit the independent part he created while remaining a joint owner of the work of joint authorship considered as a whole. However, such exploitation shall not be prejudicial to the exploitation of the work of joint authorship.
- (3)** The collaboration shall be the subject of a collaboration agreement. In the event of dispute, the competent domestic court shall have jurisdiction.
- (4)** The joint authors shall exercise their rights by mutual agreement.

(5) Unless otherwise agreed, each joint author shall be entitled to the benefits deriving from the exploitation of the work in proportion to his contribution to its creation.

(6) Notwithstanding the rights accruing from a joint author's contribution to the work of joint authorship, the other joint authors may, by mutual agreement, terminate a contribution that the joint author failed to complete as a result of refusal or force majeure.

Article 34

Ownership of rights in collective works

(1) The first owner of the moral and economic rights in a collective work shall be the natural or legal person on whose initiative and under whose responsibility the work has been created and who has published it under his name.

(2) Unless otherwise contractually agreed, each joint author of a work included in a collection of works shall retain the right to exploit his contribution independently of the collective work, provided such exploitation is not prejudicial to the exploitation of the collection of works.

Article 35

Ownership of rights in works created under a work contract or on commission

(1) The entry into a contract to rent a work or a service contract by an author does not entail a waiver of the enjoyment of copyright as recognized in this chapter unless otherwise stipulated in writing as a result of the contract.

(2) Where a work is created on behalf of a natural or private or public legal person under a work contract of the author, or where the work is commissioned from the author by such person, the first owner of the economic and moral rights shall be the author. However, the economic rights in the work shall be deemed to have been transferred to the employer to the extent justified by the habitual activities of the employer or of such natural or legal person at the time of the creation of the work.

Article 36

Ownership of rights in works created under a contract commissioning advertising

(1) In the case of a commissioned work used for advertising, the first owner of the economic and moral rights shall be the author.

(2) Nonetheless, the contract between the producer and the author shall entail, unless otherwise agreed, the assignment to the producer of the rights of exploitation of the work, provided the contract states the discrete remuneration owed for each form of exploitation of the work, having particular regard to the geographical area, the duration of the exploitation, the volume of the print and the nature of the medium.

Article 37

Ownership of rights in audiovisual works

(1) The first owners of the moral and economic rights in an audiovisual work shall be the joint authors of the work.

- (2) Unless otherwise proven, joint authors shall be assumed to include the director, the author of the screenplay, the author of the adaptation, the author of the dialogue, the composer of the music with or without words specially created for the work and the producer. The authors of previously existing works that are adapted or used for audiovisual works shall be regarded as joint authors.

Article 38

Presumption of ownership

- (1) Unless proven otherwise, the author is the person under whose name or pseudonym the work is disclosed.
- (2) For anonymous or pseudonymous works, save where the pseudonym leaves no doubt as to the identity of the author, the publisher whose name appears on the work is, unless proven otherwise, considered to represent the author and, in this capacity, is entitled to protect and ensure respect for the copyright. This paragraph shall not be applicable where the author reveals his identity and proves his entitlement.

CHAPTER VII – ASSIGNMENT OF RIGHTS AND LICENSING

SECTION I – GENERAL PROVISIONS

Article 39

Assignment of rights

- (1) Economic rights shall be assignable by transfer *intra vivos* and by testament or by the effect of law by reason of death.
- (2) Moral rights shall not be assignable by transfer *intra vivos* but may be assigned by testament or by the effect of law by reason of death.

Article 40

Licensing

- (1) The author of a work may grant licenses to other persons to carry out the acts covered by his economic rights. Such licenses may be non-exclusive or exclusive.
- (2) A non-exclusive license shall entitle its holder to perform, in the manner authorized to him, the acts concerned at the same time as the author and other holders of non-exclusive licenses.
- (3) An exclusive license shall entitle its holder to carry out, in the manner authorized to him, the acts concerned, to the exclusion of any other person, including the author.
- (4) No license may be deemed an exclusive license unless so expressly stipulated in the contract between the author and the license holder.

Article 41

Remuneration of authors

- (1) The remuneration of the author shall be proportionate to the operating revenue.

(2) It may be a flat rate in the following cases:

- (i)** the basis for the calculation of the proportional share cannot be determined by practical means;
- (ii)** the use of the work is ancillary to the exploited object.

Article 42

Form of assignment and license contracts

On pain of invalidity, contracts for the assignment of economic rights or the grant of licenses to carry out the act concerned by the economic rights shall be concluded in writing, including on electronic media in accordance with the domestic legislation in force.

Article 43

Scope of assignments and licensing

- (1)** Total assignment of future works shall be invalid.
- (2)** The assignment of economic rights and licenses to carry out the acts concerned by the economic rights may be limited to certain specific rights and also with respect to the aims, duration, territorial scope and the extent or the means of exploitation.
- (3)** Failure to mention the territorial scope for which the economic rights are assigned or the licenses granted to carry out the acts concerned by the economic rights shall be deemed to limit the assignment or the license to the country in which the assignment has been made or the license has been granted.
- (4)** Failure to mention the extent or the means of exploitation for which the economic rights have been assigned or the license has been granted to carry out the acts concerned by the economic rights shall be deemed to limit the assignment or license to the scope and means of exploitation necessary for the aims envisaged when making the assignment or granting the license.

Article 44

Distinction between ownership of the medium and copyright

- (1)** Ownership of a work is independent of the ownership of the physical object.
- (2)** Unless otherwise stipulated, the acquirer of the original or a copy of the work shall not be vested by virtue of such acquisition with any of the rights provided for in this law. Such rights are vested in the person of the author or his successors in title, who may nevertheless not require the acquirer to place the said object at their disposal.

SECTION II – SPECIAL CONTRACTS

Article 45

Publishing contract, contract at the author's expense and contract at joint expense

- (1)** A publishing contract is one under which the author of a work or his successors in title assign to a publisher, under specified conditions, the right to make or have made sufficient copies of the work, which the publisher is required to publish and disseminate.

(2)The following shall not constitute publishing contracts within the meaning of paragraph (1) above.

(a)“Contract at the author’s expense”. Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the publisher makes a number of copies of the work in the form and according to the modes of expression specified in the contract and effects their publication and dissemination. Such contract shall constitute a contract for services according to the prevailing practice and the provisions of the national code governing civil and commercial obligations.

(b)“Contracts at joint expense”. Under such contract, the author or his successors in title commission a publisher to make at his expense a number of copies of the work in the form and according to the modes of expression specified in the contract and to effect publication and dissemination in accordance with the agreement reciprocally contracted to share operating profits and losses in the agreed proportion.

Article 46

Obligations of the publisher

(1)The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts, failing which he may be obliged to do so by the competent domestic court.

(2)The publisher shall be further required to do the following:

(i) effect or caused to be effected the manufacture in the conditions, form and mode of expression provided for in the contract;

(ii) ensure that the work is continuously exploited and monitored and distributed for sale in accordance with the professional custom;

(iii) Make no changes to the work without the written authorization of the author; and

(iv) Unless otherwise agreed, cause to be displayed on each of the copies the name, pseudonym or mark of the author.

Article 47

Representation contracts

(1)A representation contract is one by which the author of a work or his successors in title authorize a legal or natural person to represent the work in conditions that he shall determine.

(2)A general representation contract is the agreement by which the collective management organization vests a natural or legal person with the power to represent the current or future works constituting the repertoire of the organization, the author or his successors in title for the duration of the contract.

Article 48

Obligations of entertainment promoters

- (1)**An entertainment promoter shall be required to inform the author or his agents of the exact program of public performances and to furnish them with a certified statement of his takings.
- (2)**An entertainment promoter shall be required to effect the public performance under technical conditions suitable to ensure the intellectual and moral rights of the author.
- (3)**An entertainment promoter may not transfer the enjoyment of the contract without the consent of the author.

Article 49

Audiovisual production contracts

- (1)**An audiovisual production contract is one by which one or more people undertake, for valuable consideration, to create an audiovisual work for a natural or legal person called a producer, who takes the initiative and responsibility to produce the work.
- (2)**Unless otherwise provided, the contract between the producer of an audiovisual work and the joint authors of such work, other than the authors of musical works included therein, shall entail the assignment of the exclusive rights in the work to the producer. However, the joint authors shall retain their graphical and theatrical rights and their right to exploit their contributions separately, unless otherwise agreed in the contract and provided that such exploitation is not likely to compete with the exploitation of the whole work.
- (3)**Remuneration as authors shall be due for each mode of exploitation. Subject to the provisions of paragraph (2) above, where the public pays a price to receive communication of a specific and individually identifiable work, the remuneration shall be proportionate to the price, having regard to any volume discounts granted by the distributor to the exploiter. It is paid to authors by the producer.

Article 50

Obligations of joint authors and the producer of the audiovisual work

- (1)**The joint authors shall guarantee to the producer the peaceful exercise of the assigned rights.
- (2)**The producer shall:
 - (i)** ensure that the audiovisual work is exploited in accordance with the professional custom; and
 - (ii)** provide the joint authors with a statement of income from the exploitation of the work depending on the mode of exploitation at least once a year. At their request, he shall provide all proof of the accuracy of the accounts, in particular the copy of contracts by which he has assigned all or some of the rights at his disposal to third parties.

PART II – RIGHTS RELATED TO COPYRIGHT

CHAPTER I – GENERAL PROVISIONS

Article 51

Definitions

(1) The following terms shall have the following meanings in this part:

- (i)** “Performers” means the actors, singers, musicians, dancers and other persons who perform, sing, recite, deliver, play in or otherwise perform literary or artistic works or traditional cultural expressions.
- (ii)** “Fixation” means the incorporation of sounds, images or sounds and images in a material medium that is permanent or sufficiently stable to permit their perception, reproduction or communication in any manner whatsoever.
- (iii)** “Phonogram” means any exclusively sound fixation of sounds from a performance or other sounds.
- (iv)** “Phonogram producer” means the natural or legal person who is first to take the initiative and responsibility for fixing sounds from a performance or other sounds.
- (v)** “Audiovisual or videogram fixation” is the incorporation of an animated sequence of images, with or without sounds or the performance of sounds, in a medium that permits their perception, reproduction or communication using a device.
- (vi)** “Audiovisual or videogram fixation producer” is the natural or legal person who first fixes the images, with or without sounds, or the performance of such images or the natural or legal person who undertook the fixation.

(2) The definitions set forth in Article 2 of Part 1 shall apply *mutatis mutandis* to this part.

Article 52

Scope of the law

(1) The provisions of this part of the Annex shall apply to the following:

- (i)** to performances where:
 - the performer is a national of one of the Member States of the Organization;
 - the performance takes place in the territory of one of the Member States of the Organization;

and

- a performance which has not been fixed on a phonogram is incorporated into a broadcast program protected under this part of the Annex;

(ii) to phonograms or audiovisual or videogram fixations where:

- the producer is a national of one of the Member States of the Organization; or
- the first fixation of the sounds has been done in one of the Member States of the Organization;

(iii) to broadcast programs where:

- the headquarters of the organization is located on the territory of one of the Member States of the Organization; or
- the broadcast program has been transmitted from a station located on the territory of one of the Member States of the Organization.

(2) The relevant provisions of the Agreement Revising the Bangui Agreement of February 24, 1999, shall apply *mutatis mutandis* to this part of the Annex.

(3) The provisions of international treaties shall remain unaffected.

Article 53

Coexistence of copyright and related rights

Related rights do not infringe copyright. Accordingly, no provision in Part II of this Annex shall be construed to limit the exercise of copyright by owners of the right.

CHAPTER II – CONTENT OF RIGHTS

SECTION I – RIGHTS OF PERFORMERS

Article 54

Economic rights of performers

(1) Subject to the provisions of Articles 62 and 63, a performer shall have the exclusive right to perform or authorize the following acts:

- (i)** the broadcasting of his performance, save where the broadcast:
 - is made by means of a fixation of the performance other than a fixation made under Article 63; or

- is a retransmission authorized by the broadcasting organization that was the first to transmit the performance;
- (ii)** the communication to the public of his performance, save where such communication:
 - is made by means of a fixation of the performance; or
 - is made by means of a broadcast of the performance;
- (iii)** the fixation of his non-fixed performance;
- (iv)** the reproduction of a fixation of his performance;
- (v)** the distribution of copies of the fixation of his performance by sale or by any other transfer of ownership or by rental; and
- (vi)** the making available to the public of his performance, such that individuals can access it at a time and place of their choosing.

(2) Unless otherwise agreed:

- (i)** the broadcasting authorization shall not entail authorization to permit other broadcasting organizations to transmit the performance;
- (ii)** the authorization to broadcast and fix the performance shall not entail authorization to reproduce the fixation; and
- (iii)** the authorization to fix the performance and to reproduce the fixation shall not entail authorization to broadcast the performance by means of the fixation or of its reproductions.

Article 55

Moral rights of performers

(1) Independently of his economic rights and even after assignment of such rights, the performer shall have the right to require to be mentioned as such and to oppose any distortion, mutilation or other modification of his performances, in respect of his live sound performances or his performances fixed on a phonogram or on audiovisual or videogram fixations.

(2) The moral right of the performer shall attach to his person. It shall in particular be perpetual, inalienable, not subject to a limitation of time and inalienable. It shall be transferable *mortis causa*.

SECTION II – RIGHTS OF PRODUCERS

Article 56

Right of phonogram producers

Subject to the provisions of Articles 62 and 63, a producer of phonograms shall have the exclusive right to undertake or authorize the following acts:

- (i) the direct or indirect reproduction of his phonogram;
- (ii) the importation of copies of his phonogram with a view to distributing them to the public;
- (iii) the distribution to the public of copies of his phonogram by sale or by any other means of transfer of ownership or by rental; and
- (iv) the making available to the public of his phonogram by wire or wireless means, such that individuals can access it at a time and place of their choosing.

Article 57

Rights of producers of audiovisual fixations or videograms

Subject to the provisions of Articles 62 and 63, a producer of audiovisual fixations or videograms shall have the exclusive right to undertake or authorize the following acts:

- (i) the direct or indirect reproduction of his audiovisual fixation or videogram;
- (ii) the importation of copies of his audiovisual fixation or videogram with a view to distributing them to the public;
- (iii) the distribution to the public of such copies of his audiovisual fixation or videogram by rental, sale, or by any other means of transfer of ownership; and
- (iv) the making available to the public through sale, exchange, lending or the communication to the public of the audiovisual fixation or videogram, including the making available to the public by wire or by wireless means of his audiovisual fixation or videogram, such that individuals can access it at a time and place of their choosing.

The rights vested in the producer of the audiovisual fixation or videogram under the preceding paragraph, together with copyright and the rights of performers which he shall have in respect of the fixed work, may not be separately assigned.

Article 58

Form of authorization of exploitation of related rights

The authorizations referred to in this part shall, on pain of invalidity, be issued by any means that leaves a written record, including electronic media, in accordance with domestic legislation.

SECTION III – RIGHTS OF BROADCASTING ORGANIZATIONS

Article 59

Rights of broadcasting organizations

Subject to the provisions of Articles 62 and 63, a broadcasting organization shall have the right to undertake or authorize the following acts:

- (i) retransmission of its broadcast programs;
- (ii) fixation of its broadcast programs;
- (iii) reproduction of a fixation of its broadcast programs;
- (iv) communication to the public of its television programs;
- (v) the making available to the public of its program, such that individuals can access it at a time and place of their choosing.

CHAPTER III – EQUITABLE REMUNERATION FOR THE USE OF PHONOGRAMS

Article 60

Equitable remuneration for broadcasting or communication to the public of phonograms

Where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or communication to the public, an equitable single remuneration, intended both for the performers and the producer, shall be paid by the user to the national collective rights management organization, which shall distribute such remuneration according to the following formula:

- 50 per cent to performers; and
- 50 per cent to the producer of the phonogram.

Article 61

Implementation of equitable remuneration

- (1) The scheme and the arrangements for the receipt of the remuneration provided for in Article 60 above shall be fixed by the collective management organization in consultation with the persons using phonograms in the conditions stipulated in Article 60. In the

absence of agreement, an arbitration committee, whose composition shall be determined by the Ministry responsible for copyright and related rights, shall make a final ruling.

- (2)** In fulfilling their obligations, persons using phonograms for commercial purposes shall be required to provide the collective management organization with the exact program of the use for such phonograms and all documentation indispensable for the distribution of rights.

CHAPTER IV – FREE USE

Article 62

General provisions

- (1)** Notwithstanding the provisions of Articles 54 to 59, beneficiaries of related rights may not prohibit the following:

- (i)** private performances that are free of charge and offered exclusively within a family circle;
- (ii)** reproductions strictly for private use of the person who makes them and not intended for collective use, subject to the provisions of Article 67; and
- (iii)** subject to sufficient particulars for the identification of the source:
 - analyses and short quotations of the source justified by the critical, argumentative, pedagogical, scientific or informational nature of the work in which they are incorporated;
 - press reviews;
 - broadcasting, even in whole, for the purposes of news, of speeches intended for the public in political, administrative, judicial or academic assemblies, and public political meetings and official ceremonies;
 - communication to the public or reproduction of excerpts from subject matter designed for educational purposes and for exclusively illustrative purposes in teaching and research;
- (iv)** parody, pastiche and caricature, having regard to the laws of the genre;
- (v)** provisional reproduction that is transitory or ancillary, where it is an essential and integral part of a technological

process with the sole goal of enabling the lawful use of subject matter protected by a related right, or its transmission among third parties through a network requiring an intermediary, although such provisional reproduction shall not have an intrinsic financial value;

- (vi)** reproduction and communication to the public of a performance, phonogram, videogram or program, subject to the provisions of Articles 60 and 61;
- (vii)** acts of reproduction and performance of a phonogram, videogram or program, where the reproduction of such a work is for the purpose of preservation or intended to preserve the conditions for its consultation for research or private study by individuals, on the premises of establishments and on dedicated terminals, by libraries that are open to the public, by museums or by archival services, provided that they seek no economic or commercial benefits; and
- (viii)** all other uses constituting exceptions regarding works protected by copyright under this Annex.

(2) The exceptions set forth in this article may not impair the normal exploitation of the performance, phonogram, videogram or program or be unjustly prejudicial to the legitimate rights of the performer, producer or broadcasting organization.

Article 63

Free use by broadcasting entities

The authorizations required under Articles 54 to 59 for fixations of performances and broadcast programs and the reproduction of such fixations and to reproduce phonograms and audiovisual or videogram fixations published for commercial purposes shall not be required where the fixation or reproduction is effected by a broadcasting organization by its own means and for its own transmission, provided that:

- (i)** for each transmission of a fixation of a performance or its reproductions under this article, the broadcasting organization shall have the right to broadcast the performance in question;
- (ii)** for each transmission of a fixation of a transmission, or the reproduction of such fixation under this article, the broadcasting organization shall have the right to broadcast the transmission; and
- (iii)** for any fixation under this article or its reproductions, the fixation and its reproductions are destroyed within a time

limit equivalent to that applicable to the fixations and reproductions of works protected by copyright under Article 18 of this Annex, with the exception of a single copy which may be retained for the exclusive purpose of preservation of archives.

CHAPTER V – TERM OF PROTECTION

Article 64

Term of protection for performances

(1) The term of protection for performances shall be twenty years with effect from:

- (i)** the end of the year of fixation, for performances fixed on phonograms; and
- (ii)** the year in which the performance took place, for performances that are not fixed.

(2) Where the performance has been fixed on an audiovisual or videogram fixation, the term of protection shall be 50 years with effect from the end of the year of fixation.

Article 65

Term of protection for phonograms and audiovisual or videogram fixations

The term of protection for phonograms and audiovisual or videogram fixations under this part shall be 50 years with effect from the end of the year of fixation.

Article 66

Term of protection for broadcast transmissions

The term of protection for broadcast transmissions under this part of the Annex shall be 25 years with effect from the end of the year in which the transmission occurred.

PART III – COMMON PROVISIONS GOVERNING COPYRIGHT AND RELATED RIGHTS

CHAPTER I – REMUNERATION FOR PRIVATE COPYING

Article 67

Remuneration for private copying of commercial phonograms and audiovisual recordings or videograms

- (1)** With respect to their works or their performances fixed on phonogram or on audiovisual or videogram fixations, the authors and performers as well as producers of such phonograms and audiovisual recordings or videograms shall be entitled to remuneration referred to as compensation for private copying intended for strictly personal and private use.
- (2)** The remuneration for private copying shall be paid by the manufacturer or the importer of recording media or devices used for private copying of works and performances fixed on

phonograms or audiovisual or videogram fixations where such media is released in national territory.

- (3) Domestic laws shall determine the types of media or devices, the remuneration rates and the terms of payment, distribution and possible reimbursement of remuneration.
- (4) Remuneration for private copying shall be collected on behalf of rightholders by the collective rights management organization duly authorized under domestic law.
- (5) Remuneration for private copying shall be reimbursed or waived where the recording medium or storage device is purchased in a professional capacity for private use or production by the following:
 - (i) broadcasting organizations;
 - (ii) producers of phonograms or audiovisual or videogram fixations and persons who copy such material on their behalf;
 - (iii) legal persons or organizations which use recording or storage media to assist persons with hearing disabilities or any person who is visually impaired or has reading difficulties.

CHAPTER II – EXPLOITATION OF WORKS IN THE PUBLIC DOMAIN

Article 68

Paying public domain

- (1) The exploitation of works or objects of related rights that have fallen into the public domain at the end of the term of protection shall be subject to an undertaking by the exploiter to pay the relevant royalties to the national collective rights management organization.
- (2) The royalties referred to in paragraph (1) above shall be equivalent to one half of the rate of remuneration normally paid to authors and holders of neighboring rights for their protected works and productions, pursuant to the applicable contracts or the prevailing practice. The revenue generated from such royalties shall be devoted to social and cultural purposes.

CHAPTER III – COLLECTIVE MANAGEMENT

Article 69

Collective management

- (1) The protection, exploitation and management of the rights of authors of works and the rights of holders of related rights as defined in this Annex and the defense of their moral interests shall be entrusted to one or more national collective rights management organizations, pursuant to domestic laws.
- (2) The provisions of paragraph (1) above shall in no event prejudice the faculty enjoyed by

the authors of works and their successors in title and by the holders of related rights to assert the rights afforded them by this Annex.

- (3) The national collective rights management organization shall administer the interests of the other national and foreign bodies in national territory in accordance with conventions or agreements into which it enters.

PART IV - INFRINGEMENTS, PROCEDURES AND PENALTIES

CHAPTER I – INFRINGEMENTS

Article 70

Acts constituting counterfeiting

The following acts shall constitute counterfeiting:

- (1) any publishing, reproduction, performance, public performance or broadcast by any means whatsoever, of an object protected under this Annex;
- (2) the export, import and distribution of a protected object on national territory for commercial purposes in violation of the provisions of this Annex;
- (3) any fixation, reproduction or communication made available to the public on payment or free of charge, or any television broadcasting of a work, performance or program, in violation of the rights protected under this Annex; and
- (4) the marketing of graphical and three-dimensional works in violation of the right to resale royalties.

Article 71

Acts subsumed under counterfeiting

The following acts shall be subsumed under counterfeiting:

- (1) the manufacture or import, for sale or rental, of a device or facility specifically designed or adapted to render inoperable any device or facility designed to prevent or restrict the reproduction of a work or to impair the quality of copies made;
- (2) fraudulent circumvention of effective technological measures that holders of copyright and related rights use to protect their products against unauthorized acts;
- (3) the manufacture or import, for sale or rental, of a device or facility such as to permit or facilitate the reception of an encrypted program broadcast or communicated by any other means to the public, by persons not entitled to receive it;
- (4) the unauthorized removal or alteration of any electronic rights management information;
- (5) the distribution or import for the purposes of distribution or making available to the public of works, performances, phonograms, audiovisual fixations or videograms or

broadcasts, in the knowledge that the electronic rights management information has been removed or altered without authority; and

- (6) where a person permits the reproduction or communication to the public, in his establishment or in facilities placed under his responsibility, of works protected under this law, without first seeking or securing prior authorization from the national collective rights management organization.

Article 72

Rights management information

Within the meaning of Article 71(4) above, "rights management information", refers to information that identifies the author, work, performer, performance, phonogram producer, phonogram, producer of the audiovisual recording or videogram, audiovisual recording or videogram, broadcasting organization, broadcast and any rightholder under this Annex, or any information relating to the terms and conditions of use of the work and other productions covered by this Annex, and any numbers or codes that represent such information, when any of these information items is attached to the copy of a work, fixed performance, copy of a phonogram, audiovisual fixation or videogram or fixed broadcast, or appears in connection with broadcasting, communicating or making available to the public of a work, recorded performance, program or broadcast.

CHAPTER II – PENALTIES

Article 73

Criminal penalties

Counterfeiting and subsumed acts shall be punishable by imprisonment of three months to two years and a fine of 1,000,000 to 10,000,000 CFA francs or one of those penalties alone, without prejudice to compensation for the damage suffered by the victims.

Article 74

Aggravating circumstances

The applicable penalties shall be doubled:

- (a) where the accused person is convicted of a further act constituting infringement of rights less than five years after having been sentenced for an earlier infringement;
- (b) where it is established that he habitually engages in such acts;
- (c) if he is the co-contracting party of the holder of the infringed right; and
- (d) where the infringements are committed by an organized gang.

Article 75

Additional criminal penalties

The competent domestic court may also:

- (a) order confiscation of the seized revenue to the benefit of the holder of the infringed rights;

- (b) order confiscation and destruction of counterfeit works and of the equipment used to commit the offense;
- (c) order the provisional or definitive closure of the establishment in which the work was published, reproduced, performed or communicated or any other facility in which the infringement was committed; and
- (d) order publication of the sentence at the expense of the convicted person.

Article 76

Civil penalties

- (1) Rightholders whose rights are established to have been infringed shall be entitled to obtain payment by the infringer of damages as compensation for the prejudice they have suffered as a consequence of the infringement and to payment of the costs arising from the infringement, including legal costs.
- (2) The amount of the damages shall be determined in accordance with the relevant provisions of the national civil code, taking into account the gravity of the material and moral prejudice suffered by the rightholder and the amount profit that the infringer derived from the infringement.
- (3) The civil penalties provided for under this article may be imposed by a criminal court seized of the counterfeiting case.
- (4) In the event of violation of the provisions governing resale royalties, the buyer, the seller and the person tasked with the public auction may be jointly sentenced to payment of damages to beneficiaries of the resale royalties.

CHAPTER III – PROCEDURES

Article 77

Persons with *locus standi*

The following persons in particular shall have *locus standi*:

- (a) holders of infringed rights or their successors in title;
- (b) the national collective rights management organization; and
- (c) professional associations of rightholders regularly constituted to defend the collective interests of their members.

Article 78

Sworn officers of collective rights management organizations

The domestic law of a Member State may authorize collective rights management organizations to appoint sworn agents empowered to monitor implementation of the requirements of this Annex on national territory and ascertain offenses.

Article 79

Obligation of public authorities

At the request of rightholders or their agents, bailiffs and collective management organizations, the authorities of the national police force, customs and the national *gendarmerie*, are required to lend their assistance and, if necessary, protection, during implementation of this Annex.

Article 80

Seizure for counterfeiting

- (1)** When their rights are violated or threatened with violation, natural or legal persons, their assigns or successors and rightholders covered by this Annex may, with the approval of the Prosecutor of the Republic or the competent judge, require a judicial police officer, bailiff or any other public officer designated by domestic law, to ascertain the offenses and, if necessary, seize infringing copies, illegally imported copies and objects and the equipment used or to be used for performance or reproduction, installed for such prohibited acts.
- (2)** The presiding judge of the competent domestic court may also, by order made on simple request, decide to:
 - (i)** suspend any ongoing manufacturing process for the unlawful reproduction of a work;
 - (ii)** suspend illicit public performances;
 - (iii)** suspend any release that infringes a protected right;
 - (iv)** seize, even on non-working days or outside working hours, unlawfully reproduced copies of the work, which are already manufactured or are being manufactured, as well as the earnings generated therefrom;
 - (v)** seize the earnings generated from exploitation that infringes copyrights and neighboring rights.
- (3)** The suspension of manufacture, release or performance may be accompanied by a fine decreed by the competent domestic court.

Article 81

Remedies against seizure for counterfeiting

- (1)** Within 10 days of the report of the seizure, the distrainee or garnishee may request the presiding judge of the competent domestic court to limit its effects, or to allow the resumption of manufacture or performance, under the authority of a third-party manager to whom shall accrue the proceeds of such manufacturing or performance.
- (2)** If the request filed under paragraph (1) above is granted, the presiding judge of the competent domestic court, ruling as in summary proceedings may, may order the requester to deposit a certain amount as guarantee for the damages which the author may claim.

Article 82

Referral to the court

If the party making the seizure fails to refer the matter to the competent domestic court within 15 (fifteen) days of seizure, release of the seized item(s) may be ordered, at the request of the distrainee or garnishee, by the presiding judge of the competent domestic court ruling as in summary proceedings.

CHAPTER IV – BORDER MEASURES

Article 83

Measures sought

- (1)** The customs department may, during customs control and at the written request of any interested party accompanied by proof of right, retain any goods which that party deems to be infringing.
- (2)** The customs department shall immediately notify the Prosecutor of the Republic, the requester and the importer that the goods have been detained at customs.
- (3)** Such detention at customs shall be automatically lifted if, within 10 working days following detention of the goods, the requester fails to justify to the customs authorities:
 - (a)** why the precautionary measures were taken or
 - (b)** that civil or criminal proceedings have been instituted before the competent national judge and the required guarantees, if any, have been provided to cover his potential liability in the event that the infringement is not subsequently established.
- (4)** For the purposes of instituting the proceedings referred to in the preceding paragraph, the requester may obtain the names and addresses of the sender, importer and consignee of the detained goods, as well as the quantity of goods, notwithstanding professional secrecy provisions binding on customs officials.
- (5)** After expiry of the 10 days referred to in paragraph 3 above, when the decision suspending free circulation of the goods does not emanate from a judicial authority or an independent administration, the owner, importer or consignee of the goods may, on deposit of a bond, file for a stay of the decision.

Article 84

***Ex-officio* action**

- (1)** Customs authorities may, *ex officio*, withhold suspected goods when they have presumptive evidence that the goods are infringing. These authorities may, at any time, request the rightholder to provide any information that may assist them in the exercise of their duties.

- (2) The rightholder, the importer or exporter shall immediately be informed of the detention.
- (3) The customs authorities shall be liable in the event of unjustified detention unless they acted in good faith.

PART V – SPECIAL PROVISIONS

Article 85

Retroactive effect

Subject to the provisions of Article 68, the provisions of this Annex shall also apply to works that were created, to performances that took place or were fixed, to phonograms that have been fixed, to audiovisual and video recordings and to broadcasts that have taken place, prior to the date of entry into force of this Annex, on condition that such works, performances, phonograms, audiovisual and video recordings and broadcasts have not yet fallen into the public domain by reason of the expiry of the term of protection which they enjoyed under Article VII of the Bangui Agreement, Act of 24 February 1999, or under the legislation of their country of origin.

Article 86

Final provisions

- (1) Part I of Annex VII of the Bangui Agreement, Act of February 24, 1999, relating to copyright and neighboring rights, is hereby repealed.
- (2) The acts and contracts concluded prior to the entry into force of this Annex shall remain in force.

ANNEX VIII
**PROTECTION AGAINST UNFAIR
COMPETITION**

Article 1
Definitions and general principles

(1) For the purposes of this Annex:

- (a)** "weakening of the image or reputation" means lessening the distinctive character or advertising value of a trademark, a trade name or other distinctive sign of an enterprise, of the external appearance of a product or of the get-up of products or services, or of a famous person or a well-known fictional character;
- (b)** "industrial or commercial activities" also means activities of the liberal professions;
- (c)** "external appearance of a product" means the packaging, shape, color or other non-functional characteristics of products;
- (d)** "trademarks" means marks relating to products, marks relating to services and marks relating to both products and services;
- (e)** "practice" means not only an act in the strict sense, but also any omission to perform an act;
- (f)** "presentation of products or services" means advertising, in particular;
- (g)** "distinctive sign of an enterprise" covers the whole range of signs, symbols, emblems, logos, slogans, etc., used by an enterprise in the course of industrial or commercial activities, to lend a certain identity to the enterprise and to the products it manufactures or the services it provides.

(2)

- (a)** Apart from the acts and practices referred to in Articles 2 to 6, an act of unfair competition shall be any act or practice which, in the course of industrial or commercial activities, is contrary to honest practice.
 - (b)** Any natural or legal person who has suffered damage or is liable to suffer damage due to an act of unfair competition may institute proceedings before the court of a Member State and may obtain injunctions, damages and any other remedy provided by civil law.
- (3)** Articles 1 to 6 shall apply independently of and in addition to any legislative provision protecting inventions, industrial designs, trademarks, literary and artistic works and other subject matter of intellectual property.

Article 2

Confusion with another's enterprise or activities

- (1)** Any act or practice which, in the course of industrial or commercial activities, generates or is likely to generate confusion with the enterprise or activities of another person, in particular with the products or services proposed by such enterprise, shall constitute an act of unfair competition.
- (2)** Confusion may concern, in particular:
 - (a)** a trademark, whether registered or not;
 - (b)** a trade name;
 - (c)** the distinctive sign of an enterprise other than a trademark or a trade name;
 - (d)** the external appearance of a product;
 - (e)** the get-up of products or services; and
 - (f)** a famous person or well-known fictional character.

Article 3

Acts damaging to another's image or reputation

- (1)** Any act or practice which, in the course of industrial or commercial activities, damages or is liable to damage the image or reputation of another's enterprise, whether the act or the practice generates confusion or not, shall constitute an act of unfair competition.
- (2)** Damage to another's image or reputation may result, in particular, from a weakening of the image or reputation attaching to:
 - (a)** a trademark, whether registered or not;
 - (b)** a trade name;
 - (c)** the distinctive sign of an enterprise other than a trademark or a trade name;
 - (d)** the external appearance of a product;
 - (e)** the get-up of products or services; and
 - (f)** a famous person or well-known fictional character.

Article 4

Misleading the public

- (1)** Any act or practice which, in the course of industrial or commercial activities, misleads or is likely to mislead the public with respect to an enterprise or its activities, in particular the products or services proposed by the enterprise, shall constitute an act of unfair competition.

- (2) The public may be misled by advertising or promotional activities, particularly with respect to the following elements:
- (a) the manufacturing process of a product;
 - (b) the suitability of a product or service for a given purpose;
 - (c) the quality, quantity or other characteristic of a product or service;
 - (d) the geographical origin of a product or service;
 - (e) the conditions under which a product or service is proposed or supplied;
and
 - (f) the price of a product or service or its method of calculation.

Article 5

Disparaging another's enterprise or activities

- (1) Any false or abusive allegation, in the course of industrial or commercial activities, which discredits or is liable to discredit another's enterprise or activities, in particular the products or services proposed by the enterprise, shall constitute an act of unfair competition.
- (2) Disparagement may result from advertising or promotional activities and concern, in particular:
- (a) the manufacturing process of a product;
 - (b) the suitability of a product or service for a given purpose;
 - (c) the quality, quantity or other characteristic of a product or service;
 - (d) the geographical origin of a product or service;
 - (e) the conditions under which a product or service is proposed or supplied;
and
 - (f) the price of a product or service or its method of calculation.

Article 6

Unfair competition concerning confidential information

- (1) Any act or practice which, in the course of industrial or commercial activities, leads to the disclosure, acquisition or use by third parties of confidential information without the consent of the person legally entitled to possess such information (hereinafter referred to as "the lawful holder"), in a manner contrary to honest commercial practice, shall constitute an act of unfair competition.
- (2) The disclosure, acquisition or use of confidential information by a third party without the consent of the lawful holder may, in particular, result from the following acts:

- (a) industrial or commercial espionage;
 - (b) breach of contract;
 - (c) breach of trust;
 - (d) instigation to commit one of the acts referred to in sub-paragraphs (a) to (c); and
 - (e) acquisition of confidential information by a third party who knew that such acquisition involved one of the acts referred to in sub-paragraphs (a) and (b) or whose ignorance of that fact constituted gross negligence.
- (3) For the purposes of this Article, information shall be considered "confidential" when:
- (a) in its totality or in the configuration or exact assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;
 - (b) it has a commercial value because it is confidential; and
 - (c) its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential.
- (4) Any act or practice which, in the course of industrial or commercial activities, constitutes or leads to:
- (a) dishonest use in commerce of confidential data obtained from tests or other confidential data whose production requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities; or
 - (b) disclosure of such data, save where necessary to protect the public or unless measures have been taken to ensure that the data are protected against dishonest use in trade;
- shall be considered an act of unfair competition.

Article 7

Disorganization of a competing enterprise and of the market

- (1) Any act or practice which, in the course of industrial or commercial activities, is liable to disorganize a competing enterprise, its market or the market of the profession concerned, shall constitute an act of unfair competition.
- (2) Disorganization may be achieved by:
- (a) suppression of advertising;

- (b) diverting of orders;
- (c) practicing abnormally low prices;
- (d) disorganizing the sales network;
- (e) poaching staff;
- (f) inducing staff to strike; and
- (g) failure to comply with the regulations governing exercise of the activity concerned.

Article 8

Determination of damages

The competent domestic court shall take into consideration the negative economic consequences, including loss of profits, suffered by the injured party, the profits made by the author of the wrongful act and the moral prejudice caused to the victim.

Article 9

Final provisions

Annex VIII of the Bangui Agreement, Act of February 24, 1999.

ANNEX IX
LAYOUT DESIGNS (TOPOGRAPHIES)
OF INTEGRATED CIRCUITS

PART I – GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex:

- (a) "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function;
- (b) "layout design" (synonym of "topography") means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such three-dimensional disposition prepared for an integrated circuit intended for manufacture;
- (c) "holder" means the natural or legal person who is to be regarded as the beneficiary of the protection referred to in Article 7.

Article 2 Subject matter and protection

- (1) Layout designs of integrated circuits may be protected under this Annex if, and to the extent that, they are original within the meaning of Article 3 below.
- (2) A registration may be applied for only if the layout design has not yet been commercially exploited or has been commercially exploited for not more than two years anywhere in the world.

Article 3 Originality

- (1) A layout design shall be deemed original if it is the result of its creator's own intellectual effort and is not commonplace among creators of layout designs and manufacturers of integrated circuits.
- (2) A layout design that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original within the meaning of paragraph (1).

Article 4 Right to protection

- (1) The right to protection of a layout design shall belong to its creator. It may be assigned or transferred by succession.
- (2) Where several persons have jointly created a layout design, the right shall belong to them jointly.

Article 5

Joint ownership of the certificate of registration of layout designs

Save otherwise stipulated, joint ownership of a certificate of registration for layout designs shall be governed by the following provisions:

- (a)** Each joint owner may exploit the creation for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the creation or who have not granted licenses. Failing an amicable agreement, such compensation shall be determined by the competent court.
- (b)** Each joint owner may take action for infringement for his own exclusive benefit. The joint owner who takes action for infringement shall notify the other joint owners of the action for infringement; judgement shall be deferred until such notification has been proven.
- (c)** Each joint owner may grant to a third party a non-exclusive license for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the creation or who have not granted licenses. Failing an amicable agreement, such compensation shall be determined by the competent domestic court.

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

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

Failing agreement within the time limit laid down in the preceding paragraph, the price shall be set by the competent court. The parties shall have one month from notification of the court decision to forego the granting of a license or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party.

- (d)** An exclusive license may only be granted with the agreement of all the joint owners or with the authorization of the competent court.
- (e)** Each joint owner may, at any time, assign his share. The joint owners shall have the right of first refusal for three months as from notification of the intended assignment. Failing agreement on the price, such price shall be set by the competent court. The parties shall have one month from notification of the court decision to forego the sale or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party; and

- (f) The joint owner of an application for a certificate or of a certificate may notify the other joint owners that he relinquishes his share in their favor. Once the relinquishment has been entered in the special register of layout designs or, in the case of an unpublished application for certificate, as from its notification to the Organization, such joint owner shall be relieved of all obligations towards the other joint owners. The other joint owners shall divide the relinquished share between them in proportion to their rights in the joint property, save where otherwise agreed.

Article 6

Right to designs created under a contract of service or an employment contract

Where a layout design has been created under a contract for service or an employment contract, the right to protection shall belong to the commissioner or to the employer, unless otherwise provided in the contract.

Article 7

Rights conferred

The protection afforded under this Annex shall be independent of the fact whether the integrated circuit incorporating the protected layout design is or is not itself incorporated in an article. Subject to the provisions of Articles 8 and 20, the following acts shall be unlawful when carried out without the authorization of the holder:

- (a) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout design in its entirety or any part thereof, except the act of reproducing any part that does not fulfill the requirement of originality referred to in Article 3; and
- (b) the act of importing, selling or otherwise distributing for commercial purposes a protected layout design, an integrated circuit in which a protected layout design is incorporated or an article in which such integrated circuit is incorporated to the extent that it continues to contain a layout design that is unlawfully reproduced.

Article 8

Limitations of the rights conferred

The protection afforded a layout design under this Annex shall not extend to:

- (a) reproduction of a protected layout design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
- (b) incorporation, in an integrated circuit, of a layout design based on such analysis or evaluation and itself possessing originality within the meaning Article 3, nor to the carrying out with respect to such layout design of any of the acts referred to in Article 7;
- (c) carrying out of any of the acts referred to in Article 7(b) above where the act is carried out with respect to a protected layout design, or an

integrated circuit in which such layout design is incorporated, which has been placed on the market by the holder or with his consent;

- (d) carrying out of any of the acts referred to in Article 7(b) with respect to an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating an unlawfully reproduced layout design or any article incorporating such integrated circuit where the person performing or ordering such act did not know and had no reasonable grounds to know, when acquiring the integrated circuit or article incorporating such integrated circuit, that it incorporated an unlawfully reproduced layout design; however, once such person has been duly advised of the fact that the layout design has been unlawfully reproduced, he may carry out any of the aforementioned acts with regard solely to the stocks at his disposal or which he had ordered before being advised and shall be required to pay to the holder an amount equivalent to a reasonable royalty that would be required under a freely-negotiated license with respect to such layout design; and
- (e) carrying out of any of the acts referred to in Article 7(b) where the act is carried out with respect to an identical original layout design created independently by a third party.

Article 9

Start and term of protection

- (1) The protection afforded a layout design under this Annex shall take effect:
 - (a) on the date of the first commercial exploitation of the layout design, anywhere in the world, by the holder or with his consent, on condition that an application for protection be filed by the holder with the Ministry responsible for industrial property or with the Organization within the time limit referred to in Article 2(2); or
 - (b) on the filing date allocated to the application for registration of the layout design filed by the holder if the layout design has not been the subject of prior commercial exploitation anywhere in the world.
- (2) The protection afforded a layout design under this Annex shall cease at the end of the tenth calendar year following the date on which it took effect.

PART II - REGISTRATION FORMALITIES

Article 10

Filing an application

- (1) A separate application shall be filed for each layout design.
- (2) An application for the registration of a layout design (topography of an integrated circuit) shall be filed with the Organization or national service responsible for industrial

property, in accordance with Article 8 of the Agreement and this Annex, following the procedures laid down in the implementing regulations.

(3) The file shall contain:

- (a)** an application for registration of the layout design addressed to the Director-General bearing, *inter alia*, the applicant's name, address, nationality and, where the nationality is different from the address given, the address of habitual residence;
- (b)** a document proving payment of the required fees to the Organization;
- (c)** a short and precise description of the layout design with sufficient information on how best to exploit the layout design known to the creator on the date of deposit and, in the event that a priority is claimed, the priority date of the application;
- (d)** the powers of the applicant's agent, where appropriate, a copy or a drawing of the layout design, together with information defining the electronic function that the integrated circuit is intended to perform; however, the applicant may omit from the copy or from the drawing those parts that concern the method of manufacturing the integrated circuit, on condition that the parts submitted are sufficient to permit identification of the layout design;
- (e)** the date of the first commercial exploitation of the layout design anywhere in the world or a statement that exploitation has not yet begun; and
- (f)** particulars establishing the entitlement to protection under Article 4.

Article 11

Inadmissibility due to non-payment

No application for registration shall be acceptable if it is not accompanied by a document attesting payment of the required fees.

Article 12

Admissibility conditions – filing date

The Organization shall allocate as the filing date the date of receipt of the application, written in one of its working languages, by the Ministry responsible for industrial property or by the Organization, provided that, at the time of receipt, the application contains:

- (a)** an express or implicit indication that registration of a layout design is requested;
- (b)** information whereby the identity of the applicant may be established;
- (c)** a copy or drawing of the layout design; and

- (d) proof of payment of the prescribed fees.

Article 13
Publishing of the application

The Organization shall publish the following details for each registered layout design:

- (a) the application number;
- (b) the title of the layout design;
- (c) the filing date, and where applicable the date of first exploitation;
- (d) the name and address of the applicant;
- (e) the name and address of the agent, if any;
- (f) the name and address of the author(s), unless he/they have requested that such information be excluded when publishing the application; and
- (g) the descriptions and representations, if any.

Article 14
Opposition

- (1) Any interested party may oppose the registration of a layout design (topography) of circuits by sending to the Organization, within three months as from the publication mentioned in Article 13 above, a written statement setting out the reasons for his opposition, which reasons must be based on an infringement either of the provisions of Articles 1, 2 or 3 of this Annex, or of a prior registered right belonging to the opposing party.
- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may reply, setting out his reasons, within a once-renewable period of three months. The reply shall be forwarded to the opponent or to his agent.
- (3) Before taking a decision on the opposition, the Organization shall, on request, hear the parties or their agents.
- (4) The Organization's decision on the opposition shall be appealable before the High Commission of Appeal within 60 days as from the date of receipt of notice of the decision by the interested parties.
- (5) The Organization shall only declare the registration forfeit in so far as the aforementioned opposition is valid.
- (6) The final decision on cancellation shall be published in the special register of the Organization.

Article 15

Claim of ownership before the Organization

- (1)** When a person who is not entitled to the registration of a layout design (topography) of integrated circuits files an application, the person entitled to the registration certificate may claim ownership of the said application before the Organization within three months as from the date of publication of the application.
- (2)** The Organization shall send a copy of the statement of claim of ownership to the applicant or to his agent, who may submit a reasoned reply within a once-renewable period of three months. The reply shall be forwarded to the claimant or to his agent.
- (3)** Before taking a decision on the claim of ownership, the Organization shall, on request, hear the parties or their agents.
- (4)** The Organization's decision on the claim of ownership shall be appealable before the High Commission of Appeal within 60 days as from the date of receipt of notice of the decision by the interested parties.
- (5)** The Organization shall transfer the application for registration to the claimant in so far as the aforementioned claim of ownership is valid.
- (6)** The final decision on transfer of the application shall be published in the special register of the Organization.

Article 16

Examination of applications

The Organization shall examine each application for registration of a layout design to determine whether it complies with the requirements of Articles 2 and 10 above, without carrying out an examination of originality, of the applicant's right to protection or of the correctness of the statements made in the application.

Article 17

Conditions governing rejection

- (1)** Where an application does not comply with the requirements of Article 10, save for its sub-paragraph (b), it shall be returned, where appropriate, to the applicant or his agent, who shall be invited to correct the documents within three months as from the date of notification. That period may be extended by 30 days, in cases of justifiable need, at the request of the applicant or his agent. The application so corrected within the said period shall retain the date of the initial application
- (2)** In the event that the corrected documents are not provided within the prescribed period, the application for registration of the layout design shall be rejected.
- (3)** The rejection shall be pronounced by the Director-General. No application may be rejected under paragraph (2) above without the applicant or his agent having first been given the opportunity to correct the said application to the extent and according to the procedure prescribed.

- (4) Notwithstanding the provisions of paragraphs (1) and (2) above, the Organization may automatically correct obvious clerical errors.
- (5) The applicant may lodge an appeal with the High Commission of Appeal within 60 days as from the date of notification of the rejection.

Article 18

Registration of applications

- (1) Where the Organization ascertains that an application complies with the requirements of Articles 2 and 10, it shall register the layout design in the special register of layout designs in which, for each protected layout design, it shall make the entries prescribed in this Annex.
- (2) Layout designs shall be registered by decision of the Director-General of the Organization or by decision of an official of the Organization duly authorized thereto by the Director-General.
- (3) Prior to registration, any application for a layout design may be withdrawn by its author. The documents filed shall be returned to him only at his request.

Article 19

Publication of the registration

The Organization shall publish the following details for each registered layout design:

- (a) the registration number of the layout design;
- (b) the title of the layout design;
- (c) the filing date, and where stated in the application pursuant to Article 10(3)(e), the date of first commercial exploitation of the layout design anywhere in the world;
- (d) the corporate name or name and surname of the holder of the layout design, as well as his/its address;
- (e) the name and address of the agent, if any;
- (f) the names and addresses of the author (s), unless he/they has/have requested that such information be excluded when publishing the application; and
- (g) the descriptions and representations, if any.

Article 20

The special register of layout designs

- (1) The Organization shall keep a register, known as "the special register of layout designs", in which it shall be required, for each protected layout design, to make all the entries as provided in this Annex.

- (2) The implementing regulation shall lay down the acts that are to be registered and published.

Article 21

Access to the information in the special register of layout designs

Any person may, at any time, on payment of the prescribed fee, consult the special register of Layout Designs of the Organization or request, at his own expense, information, extracts or copies of such information

PART III – TRANSFER, ASSIGNMENT OF RIGHTS AND LICENSING

Article 22

Transfer and assignment of rights

- (1) The rights subsisting in an application for registration of a layout design or in a layout design shall be transferable in whole or in part.
- (2) Acts involving the transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of an application for registration of a layout design (topography) of an integrated circuit shall, on pain of invalidity, be evidenced in writing.

Article 23

Recording and publication of acts

- (1) The acts referred to in the preceding Article shall not be binding on third parties unless they are entered in the special register of layout designs kept by the Organization; a record of such acts shall be kept by the Organization.
- (2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the special register of layout designs, as well as a record of the entries concerning layout designs that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 24

License contract

- (1) The holder of a layout design may, by contract, grant to a person, whether natural person or legal entity, a license enabling him to exploit the protected layout design.
- (2) The duration of the license may not be longer than that of the layout design.
- (3) The license contract shall be entered in the special register of layout designs. It shall not be binding on third parties unless it is entered in the said register and published in the format specified in the implementing regulations relating to this Annex.
- (4) The license shall be cancelled from the register at the request of the holder of the layout design or the licensee on presentation of proof of the expiry or termination of the license contract.

- (5) In the absence of provisions to the contrary in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or exploiting the protected layout design himself.
- (6) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from exploiting the protected layout design himself.

Article 25

Invalid clauses

- (1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they constitute anti-competitive practices and generally impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the layout design or not necessary for the upholding of such rights.
- (2) The following shall not be considered restrictions within the meaning of paragraph (1) above:
 - (a) restrictions relating to the extent, scope or duration of exploitation of the layout design; and
 - (b) the obligation on the licensee to refrain from any act liable to impair the validity of the layout design.
- (3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 26

Recognition of invalid clauses

The civil court shall recognize the invalid clauses referred to in Article 25 above, at the request of any interested party.

Article 27

Non-voluntary license for non-working

- (1) At the request of any person made four years as from the filing date of the application for the registration of a layout design, or three years as from the date of registration of the layout design, whichever period expires later, a non-voluntary license may be granted where one or more of the following conditions are fulfilled:
 - (a) the protected layout design is not being worked on the territory of a Member State at the time the request is made;
 - (b) the working of the protected layout design on such territory does not meet the demand for the protected product on reasonable terms; or
 - (c) on account of the refusal of the holder of the layout design to grant licenses on reasonable commercial terms and procedures, the

establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced.

- (2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may not be granted if the holder of the layout design provides legitimate reasons for the non-working.

Article 28

Request for the grant of a non-voluntary license

- (1) The request for the grant of a non-voluntary license shall be made to the civil court of the domicile of the holder of the layout design or, if the holder is domiciled abroad, to the civil court of either his elected domicile or the place in which he has named an agent for the purposes of filing. Only requests made by persons domiciled on the territory of a Member State shall be considered.

The holder of the layout design or his agent shall be informed thereof without delay.

- (2) The request shall contain:
- (a) the name and address of the requester;
 - (b) the title of the layout design and the number of the layout design in respect of which a non-voluntary license is requested;
 - (c) in the case of a non-voluntary license requested under Article 27 above, a statement by the requester in which he undertakes to work the layout design on the territory of one of the Member States in such a way as to meet the needs of the market.
- (3) The request shall be accompanied by:
- (a) proof that the requester has previously approached the holder of the layout design, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him subject to reasonable commercial terms and procedures and within a reasonable time; and
 - (b) proof that the requester is capable of working the protected layout design.

Article 29

Grant of non-voluntary license

- (1) The civil court shall examine whether the request for the grant of a non-voluntary license satisfies the requirements of Article 28 above. If the request does not satisfy the said specified requirements, the court shall reject it. Before rejecting the request, the court shall inform the requester of the deficiencies of his request and shall allow him to make the necessary corrections.

- (2) Where the request for the grant of a non-voluntary license satisfies the requirements of Article 28 above, the civil court shall notify it to the holder of the layout design concerned, and also to any licensee whose name appears in the special register of layout designs, and shall invite them to submit their observations on the said request in writing within three months. Such observations shall be communicated to the requester. The civil court shall likewise notify the request to any government authorities concerned. The civil court shall hold a hearing on the request and the observations received to which the requester, the holder of the layout design, any licensee whose name appears in the special register of layout designs and any government authorities concerned shall be invited.
- (3) Once the procedure prescribed in paragraph (2) above has been completed, the civil court shall take a decision on the request, either granting or refusing the non-voluntary license.
- (4) If the non-voluntary license is granted, the decision of the civil court shall specify:

 - (a) the scope of the license, specifying in particular the acts referred to in Article 7(b) of this Annex to which it extends and the period for which it is granted, it being understood that a non-voluntary license granted under Article 27 above cannot extend to the act of importation;
 - (b) the amount of the remuneration to be paid by the licensee to the holder of the layout design; in the absence of agreement between the parties, such remuneration shall be equitable, due regard being had to all the circumstances of the case. The said amount shall be subject to judicial revision at the request of the holder of the non-voluntary license or holder of the layout design.
- (5) The decision of the civil court shall be in writing and shall state the grounds on which it is based. The civil court shall convey the decision to the Organization, which shall register it. The Organization shall publish the decision and notify it to the requester, the holder of the layout design and any licensee whose name appears in the special register of layout designs.

Article 30

Rights and obligations of the holder of a non-voluntary license

- (1) On expiry of the time limit for appeal specified in Article 33 of this Annex, or once an appeal decision has been handed down that wholly or partly upholds the decision by which the civil court granted the non-voluntary license, the licensee shall henceforth be authorized to exploit the protected layout design according to the terms laid down in the decision of the civil court or in the appeal decision, and shall require him to pay the remuneration specified in the said decisions.
- (2) The grant of a non-voluntary license shall not affect either license contracts in force or non-voluntary licenses in force and shall not preclude the conclusion of other license contracts or the grant of other non-voluntary licenses. The holder of the layout design

may not however grant to other licensees more favorable terms than those of the non-voluntary license.

Article 31

Limitation of the non-voluntary license

- (1)** The beneficiary of the non-voluntary license may not, without the consent of the holder of the layout design, grant any third party permission to perform any of the acts that he is authorized to perform under the non-voluntary license.
- (2)** Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may be transferred together with the business, company or establishment that exploits the protected layout design. No such transfer shall be valid without the authorization of the court. Before granting the authorization, the court shall give the holder of the layout design a hearing. The court shall notify the authorization to the Organization which shall register and publish it. Any transfer so authorized shall cause the new licensee to accept the same obligations as those that were incumbent on the former licensee.

Article 32

Amendment and withdrawal of the non-voluntary license

- (1)** At the request of the holder of the layout design or the beneficiary of the non-voluntary license, the court may amend the decision on the grant of a non-voluntary license where new facts justify such amendment.
- (2)** At the request of the holder of the layout design, the court shall withdraw the non-voluntary license:
 - (a)** if the grounds for its grant have ceased to exist;
 - (b)** if the beneficiary exceeds the scope of the license under Article 29(4)(a) above; and
 - (c)** if the beneficiary is in arrears with the payment of the remuneration referred to in Article 29(4)(b) above.
- (3)** In the cases provided for under paragraphs 2(a) and (b), the withdrawal may be requested by other licensees.
- (4)** Where the non-voluntary license is withdrawn under paragraph (2)(a) above, the beneficiary of the non-voluntary license shall be allowed a reasonable period within which to cease working the layout design where immediate cessation would have serious adverse consequences for him.
- (5)** The provisions of Articles 28 and 29 of this Annex shall apply to the amendment or withdrawal of a non-voluntary license.

Article 33

Appeals

- (1)** The holder of the layout design, the licensee whose name appears in the special register or any person who has requested the grant of a non-voluntary license may, within one month from publication of the decision referred to in Articles 29(5) above, appeal to the competent higher court against a decision taken under Articles 29(3), 30(1) or 31.
- (2)** The appeal referred to in paragraph (1) above contesting the grant of a non-voluntary license, the authorization to transfer a non-voluntary license or the amendment or withdrawal of a non-voluntary license shall have staying effect.
- (3)** The decision on appeal shall be notified to the Organization, which shall register and publish it.

Article 34

Defense of rights granted

- (1)** Any beneficiary of a contractual or non-voluntary license may, by registered letter, request the holder of a layout design to institute the necessary legal proceedings in order to secure civil or criminal sanctions for any infringements of the rights attached to the layout design, reported by the said beneficiary.
- (2)** If, within three months of the request provided for in paragraph (1), the holder of the layout design refuses or fails to institute the proceedings referred to in the above paragraph, the beneficiary of a registered license may institute such proceedings in his own name, without prejudice to the layout design holder's right to intervene in the proceedings.

Article 35

Cessation of the obligations of the beneficiary of the non-voluntary license

Any action seeking invalidation of the layout design shall be directed against the holder of the layout design. If a final legal judgement declares the layout design invalid, the holder of the non-voluntary license shall be released from all obligations resulting from the decision granting him the non-voluntary license.

Article 36

***Ex-officio* license**

- (1)** The Minister responsible for industrial property matters of a Member State may decide, even without the consent of the holder, that a public body or a third party he designates may exploit the layout design on the territory of such State where:
 - (a)** the public interest, particularly concerning national security, food, health or other vital sectors of the national economy of a Member State, requires the exploitation of a protected layout design for public and non-commercial purposes; or where
 - (b)** a judicial or administrative body holds that the conditions of exploitation, by the holder or his licensee, of a protected layout design are anti-

competitive and where the Minister is convinced that exploitation of the layout design in accordance with this Article would put an end to such practices.

The authorization to exploit shall be limited, in its scope and duration, to the purpose for which it has been granted and it shall be principally intended for the supply of the domestic market of the Member State. Such right of exploitation shall be non-exclusive and shall give rise to payment to the holder of appropriate remuneration taking into account the economic value of the ministerial authorization as determined in the decision of the Minister and, where appropriate, of the need to combat anti-competitive practices.

- (2) The request seeking the authorization of the Minister shall be accompanied by proof that the holder has received, from the requester, an application for a contractual license, but that the requester has not been able to obtain a license under reasonable commercial conditions and within a reasonable period of time.
- (3) At the request of the holder or the beneficiary of authorization, the Minister may, after hearing the parties, if one or both of them wish to be heard, modify the decision authorizing exploitation of the layout design to the extent justified by the circumstances.
- (4) At the request of the holder:
 - (a) the Minister shall withdraw the authorization if he is convinced that the circumstances that led to his decision no longer hold and are unlikely to re-occur or that the beneficiary of the authorization has not complied with its conditions;
 - (b) notwithstanding the provisions of sub-paragraph (a) above, the Minister shall not withdraw the authorization if he is convinced that protection of the legitimate interests of the beneficiary of the authorization justify maintaining it.
- (5) Where a third party has been designated by the Minister, the authorization may be transferred only with the enterprise of the beneficiary of the authorization or that part of the enterprise in which the layout design is exploited.
- (6) The decisions of the Minister taken under this Article may be appealed to the competent domestic court of the Member State concerned.

PART IV – CANCELLATION, CLAIMS, INFRINGEMENT OF RIGHTS AND ATTENDANT REMEDIES

Article 37

Forfeiture of the registration

- (1) Any concerned person may request that a layout design be declared forfeit on the grounds that:

- (a) the layout design is not eligible for protection under Articles 2 and 3;
 - (b)
 - (c) the holder is not entitled to enjoy the protection provided for in Article 4;
 - (d) if the layout design has been commercially exploited anywhere in the world prior to the filing of the relevant application for registration, such application has not been filed within the time limit laid down in Articles 2(2) and 9(1).
- (2) If the grounds for forfeiture affect only a part of a layout design, forfeiture shall be effected only to the corresponding extent.
 - (3) A request for forfeiture of the registration of a layout design based on paragraphs (1) and (2) shall be submitted to the competent domestic court in writing and duly reasoned.
 - (4) Any registration or part of a registration of a layout design that has been forfeited shall be deemed invalid as from the date on which protection took effect.
 - (5) The final decision of the court of the Member State concerned shall be notified to the Organization, which shall declare the registration forfeit, record such forfeiture in the special register and publish the relevant notice.

Article 38

Claim of ownership before the Tribunal

- (1) If the layout design has already been registered, the claim of ownership shall be filed before the competent domestic court. In this case, the action shall lapse within three years from the publication of the registration certificate of the layout design. Action brought against a defendant who acts in bad faith shall not be subject to any statutory limitations.
- (2) The final decision transferring the registration shall be communicated to the Organization. This decision shall be recorded in the special register and published.

Article 39

Infringement of rights

The carrying out of any act characterized unlawful under Article 5 shall constitute an infringement of the rights deriving from a layout design.

Article 40

Remedies for infringement of rights

At the request of the holder, or of his licensee if the licensee has requested the holder to institute legal proceedings for specific damages and the holder has refused or failed to do so within a reasonable time limit, the court may order any measure in order to stop the infringement or to prevent an imminent infringement, grant damages and order any other means of sanction provided by law.

Article 41

Determination of damages

The court seized of the matter shall determine the amount of damages, taking into account the negative economic consequences, including loss of profits, suffered by the injured party, the profits made by the infringer and the moral prejudice caused to the rightholder as a result of the infringement.

Article 42

Penalties for infringement of rights

Any person who, knowingly and without authorization, carries out any of the acts characterized as unlawful under Article 5 shall be guilty of an offense subject to imprisonment of one to three years and a fine of 1,000,000 to 6,000,000 CFA francs or to one of these two penalties.

Article 43

Other penalties

The court may also order the seizure, confiscation and destruction of layout designs, integrated circuits or incriminated articles and of all equipment or tools having served specially to commit the offense.

Article 44

Competent courts

- (1) Civil actions relating to layout designs shall be brought before the competent domestic courts and judged as summary proceedings.
- (2) If the accused in an action before a criminal court raises questions in his defense concerning the ownership of the layout design, the competent court shall pass judgement thereon.

PART V – TRANSITIONAL AND FINAL PROVISIONS

Article 45

Acquired rights

- (1) This Annex shall apply to applications for the registration of layout designs filed as from the date of its entry into force, subject to the rights acquired under Annex IX of the Bangui Agreement, Act of February 24, 1999.
- (2) Applications for the registration of layout designs filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.
- (3) However, the exercise of the rights deriving from layout design registrations granted under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

ANNEX X
PLANT VARIETIES

PART I – GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex:

- (a)** "plant variety certificate" means the title issued to protect a new plant variety;
- (b)** "plant variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, whether or not it meets the conditions for the grant of a plant variety certificate, can be:
 - (i)** defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - (ii)** distinguished from any other plant grouping by the expression of at least one of the above-mentioned characteristics; and
 - (iii)** considered as a unit with regard to its suitability for being propagated unchanged.
- (c)** "botanical taxon" means the unit of the botanical classification of the genus and the species in particular;
- (d)** "protected variety" means a variety that is the subject of a plant variety certificate;
- (e)** "essentially derived variety" means a variety which:
 - (i)** is predominantly derived from another variety, the "initial variety", or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
 - (ii)** is clearly distinguishable from the initial variety; and
 - (iii)** save for the differences resulting from the derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant or somaclonal variant, the selection of a variant individual from plants of

the initial variety, backcrossing or transformation by genetic engineering.

(f) "breeder" means:

- (i)** the person who bred, or discovered and developed a variety;
- (ii)** the person who is the employer of the above-mentioned person or who commissioned his work;
- (iii)** the successor in title or the first or second above-mentioned person, as the case may be.

The term does not include a person who has redeveloped or rediscovered a variety whose existence is publicly known or is a matter of common knowledge;

(g) "variety-related material" means:

- (i)** reproductive or vegetative propagating material in whatever form;
- (ii)** harvested material, including entire plants and parts of plants; and
- (iii)** products made directly from harvested material.

Article 2

Plant variety certificate

- (1)** The breeding of a new plant variety shall entitle the breeder to a new protective document known as a "plant variety certificate".
- (2)** Plant variety protection shall be obtained by registration.
- (3)** A plant variety certificate shall be granted for one variety only.

Article 3

Botanical taxa eligible for protection

All botanical taxa shall be protected by this Annex, save for wild species, that is, species that have been neither planted nor improved by man.

PART II – CONDITIONS FOR THE ISSUANCE OF A PLANT VARIETY CERTIFICATE

Article 4

Criteria for the protection of a plant variety

In order to enjoy the protection afforded by this Annex, a variety shall be:

- (a) new;
- (b) distinct;
- (c) uniform;
- (d) stable; and
- (e) given a denomination devised in accordance with the provisions of Article 23.

Article 5
Novelty

- (1)** A variety shall be deemed new if, on the filing date of the application or on the priority date if any, reproductive or vegetative propagating material or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or of his successor in title or assignee, for the purposes of exploitation of the variety:
- (a) on the territories of the Member States of the Organization, for more than one year; and
 - (b) on the territories of non-Member States, for more than:
 - (i) six years, in the case of trees and vines; or
 - (ii) four years, in the case of other species.
- (2)** Novelty shall not be lost by sale or disposal to others:
- (a) where it is due to an abuse committed to the detriment of the breeder or of his successor in title or assignee;
 - (b) where it forms part of an agreement for the transfer of the rights in the variety;
 - (c) where it forms part of an agreement under which a third party has multiplied reproductive or vegetative propagating material of the variety concerned on behalf of the breeder or his successor in title or assignee, on condition that the multiplied material reverts to the breeder or his successor in title or assignee and on condition that the said material is not used for the production of another variety;
 - (d) where it forms part of an agreement under which a person has undertaken field tests or laboratory trials or small-scale processing trials in order to evaluate the variety;
 - (e) where it forms part of the fulfillment of a statutory or regulatory obligation, in particular concerning biological safety or the entry of varieties in an official catalogue of varieties passed for marketing; or

- (f) where it relates to harvested material that is a by-product or surplus product of the creation of the variety or of the activities referred to under (c) to (e) of this paragraph, on condition that the material is sold or otherwise disposed of anonymously (without variety identification) for the purposes of consumption.
- (3) Where the production of a variety requires repeated use of one or more other varieties, the sale or disposal to others of propagating material or of harvested material of the former variety shall constitute facts relevant to the novelty of the latter variety or varieties.

Article 6 Distinctness

- (1) A variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application or on the priority date if any.
- (2) The filing, in any country, of an application for a plant variety certificate or for entry in a catalogue of varieties passed for marketing shall be deemed to render the variety that is the subject of the said application a matter of common knowledge as from the application date, provided that the application leads to the issue of a plant variety certificate or to entry in the catalogue, as the case may be.
- (3) The fact that the existence of another variety is a matter of common knowledge may be established by various factors such as:
- (a) exploitation of the variety already in progress;
 - (b) entry of the variety in a variety register kept by a recognized professional association; or
 - (c) the inclusion of the variety in a reference collection.

Article 7 Uniformity

A variety shall be deemed uniform if, subject to the variation expected on account of the particular features of its reproductive or vegetative propagation, it is sufficiently homogenous in its relevant characteristics.

Article 8 Stability

A variety shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or, where there is a particular cycle of reproductive or vegetative propagation, at the end of each such cycle.

Article 9

Right to a plant variety certificate

- (1)** The right to a plant variety certificate shall belong to the breeder.
- (2)** The right to a plant variety certificate may be assigned or transferred by succession.
- (3)** The breeder shall be mentioned as such on the plant variety certificate.
- (4)** In the absence of proof to the contrary, the applicant shall be considered the person entitled to a plant variety certificate.
- (5)** If several persons have bred a variety jointly, the right to a plant variety certificate shall belong to them jointly.

Article 10

Joint ownership of a plant variety certificate

- (1)** Unless otherwise stated, especially regarding joint ownership regulations, joint ownership of a plant variety certificate shall be governed by the following provisions:
 - (a)** Each joint owner may exploit the plant variety certificate for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the certificate or who have not granted licenses. Failing an amicable agreement, such compensation shall be determined by the competent domestic court.
 - (b)** Each joint owner may take action for infringement for his own exclusive benefit. The joint owner who takes action for infringement shall notify the other joint owners of the action for infringement. Judgement shall be deferred until such notification has been proved.
 - (c)** Each joint owner may grant to a third party a non-exclusive license for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the certificate or who have not granted licenses. Failing an amicable agreement, such compensation shall be determined by the competent domestic court.

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

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

Failing agreement within the time limit laid down in the preceding paragraph, the price shall be set by the competent domestic court. The parties shall have one month from notification of the court decision to forego the granting

of a license or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party.

- (d) An exclusive license may only be granted with the agreement of all the joint owners or with the authorization of the competent court.
- (e) Each joint owner may, at any time, assign his share. The joint owners shall have the right of first refusal for three months as from notification of the intended assignment. Failing agreement on the price, such price shall be set by the competent domestic court. The parties shall have one month from notification of the court decision to forego the sale or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party.
- (f) The joint owner of a plant variety certificate may notify the other joint owners that he is relinquishing his share in their favor. Once the relinquishment has been entered in the special register of plant varieties or, in the case of an unpublished application for a registration certificate, as from its notification to the Organization, such joint owner shall be relieved of all obligations towards the other joint owners. The other joint owners shall divide the relinquished share among themselves in proportion to their rights in the joint property, save where otherwise agreed.

Article 11

Plant varieties produced on order

Save where otherwise agreed by contract, the right to a plant variety certificate for a variety bred in fulfillment of an order under a business contract shall belong to the person who ordered the variety.

Article 12

Plant varieties bred by employees

- (1) Where the individual who bred the plant variety is an employee, and where there are no contractual provisions that are more favorable to the employee, the right to a plant variety certificate shall be determined as follows:
 - (a) Varieties bred by an employee while executing an employment contract including inventive activity that is part of his duties, or studies and research explicitly entrusted to him, shall belong to the employer. In this case, the employee who bred the variety shall be entitled to additional remuneration which, failing collective or individual negotiation, shall be determined by the competent domestic court.
 - (b) Where an employee is not required by his employment contract to engage in inventive activity, but has bred the variety using techniques or facilities owned by the company, or information procured by the company, the employer shall have the right to claim ownership or

exploit all or some of the rights conferred by the plant variety certificate. In the latter case, the employee must be paid a fair price which, failing agreement between the parties, shall be set by the competent domestic court. The court shall take into consideration, all the facts that may be provided by the employer and the employee to determine the right price, both on the basis of the initial contributions of either party and of the industrial and commercial utility of the plant variety.

- (c) All other plant varieties shall belong to the employee.
- (2) In any event, the employee who breeds a plant variety shall immediately inform his employer who shall acknowledge receipt of the information.
- (3) The employee and the employer must share with each other all relevant information on the plant variety concerned. They shall refrain from any disclosure likely to interfere with the exercise of all or some of the rights conferred by this Annex.
- (4) Any agreement between the employee and his employer relating to a plant variety bred by the employee shall, on pain of nullity, be made in writing.
- (5) In the case referred to in point (1)(a) above, if the employer expressly waives his right to the plant variety certificate, the right shall belong to the employee.
- (6) The provisions of this Article shall also apply to employees of the State, local councils and any public legal entity.

PART III – PROCEDURE FOR THE GRANT OF A PLANT VARIETY CERTIFICATE

Article 13

Filing the application

- (1) The application for a plant variety certificate shall be filed with the Organization or national service responsible for industrial property, pursuant to Article 8 of the Agreement and of this Annex, in accordance with the terms defined in the implementing regulations.
- (2) The file shall contain:
 - (a) an application bearing:
 - (i) the name and other prescribed information relating to the applicant, the breeder and the agent if any;
 - (ii) identification of the botanical taxon (Latin name and common name);
 - (iii) the denomination proposed for the variety or a provisional designation; and

- (b) a succinct technical description of the variety;
 - (c) proof of payment of the required fees;
 - (d) an unstamped private power of attorney, if the applicant is represented by an agent; and
 - (e) the document of priority, if any.
- (3) The above documents shall be in one of the working languages of the Organization.
- (4) The applicant may withdraw his application at any time until it is ruled that the application satisfies the conditions necessary for a plant variety certificate to be issued.

Article 14
Claiming priority

- (1) Any person wishing to avail himself, under Article 11 of the International Convention for the Protection of New Varieties of Plants, of the priority of an earlier filing shall be required to submit his application for a plant variety certificate to the Organization within 12 months following the date of his earlier filing.
- (2) The applicant must attach to his application for a plant variety certificate, or submit to the Organization within six months of his application:
- (a) a written statement specifying the date and number of the earlier filing, the country in which it was made and the name of the applicant; and
 - (b) a certified copy of the earlier application.
- (3) Where there are two or more earlier applications, priority may be based only on the earliest application.
- (4)
- (a) Priority shall have the effect of the application being deemed to have been filed on the filing date of the first application with regard to the conditions governing the protection accorded to the variety.
 - (b) The applicant shall moreover have the faculty of requesting deferment of the examination of the variety for not more than two years from the expiry date of the priority term or three years from the filing date of the first application.
- However, if the first application is rejected or withdrawn, examination of the variety may be commenced before the date specified by the applicant; in that case the applicant shall be afforded a reasonable period within which to furnish the information, documents or material required for examination.
- (5) Failure to submit in due time any of the aforementioned items shall result as of right in loss of the benefit of the priority right claimed. Any item that reaches the Organization

more than six months after the filing of the application for a plant variety certificate shall be declared inadmissible.

Article 15

Inadmissibility due to non-payment

No application shall be admissible if it is not accompanied by a document proving payment of the prescribed fees.

Article 16

Admissibility conditions and filing date

(1)

(a) The Organization shall allocate as the filing date the date of receipt of the application by the Ministry responsible for industrial property or by the Organization, provided that, at the time of receipt, the application contains:

(i) information whereby the identity of the applicant may be established;

(ii) the description of the variety; and

(iii) proof of payment of the filing and publication fees;

(b) If the Organization finds that, at the time of receiving the application, not all the items referred to in Article 13(2) have been furnished, it shall request the applicant to make the necessary corrections and shall allocate as the filing date the date of receipt of the corrections requested; if the correction is not made within the time allowed, the application shall be deemed not to have been filed.

(2) If the application contains defects other than those referred to in the preceding subparagraph, the Organization shall invite the applicant to rectify it; if the application is not rectified within the time allowed, it shall be deemed not to have been filed.

Article 17

Publishing of the application

The Organization shall publish a notice of filing of the application containing the items mentioned in Article 13(2)(a) and (b).

Article 18

Objections to the issuance of a plant variety certificate

(1) Once the application has been published, any person may file with the Organization, within three months, written and reasoned objections to the issuance of a plant variety certificate. A fee shall be charged on the filing of an objection.

(2) Objections may be filed exclusively for the purpose of asserting that the variety is not new, distinct, uniform or stable or that the applicant is not entitled to protection.

- (3) The Organization shall send a copy of the notice of objection to the applicant who may respond, stating the grounds for his response, within three months, renewable once.
- (4) Before ruling on the objection, the Organization shall hear the parties or one of the parties, or their agents, if so requested.
- (5) The Organization's ruling on the objection shall be subject to appeal to the High Commission of Appeal within 60 days as from notification of the decision to the parties concerned.

Article 19

Claim of ownership before the Organization

- (1) When a person who is not entitled to the plant variety certificate files an application, the person entitled to the certificate may claim ownership of the said application before the Organization within three months as from publication of the application.
- (2) The Organization shall send a copy of the statement of claim of ownership to the applicant or to his agent, who may reply, setting out his reasons, within a once-renewable period of three months. The reply shall be forwarded to the claimant or to his agent.
- (3) Before taking a decision on the claim of ownership, the Organization shall, on request, hear the parties or their agents.
- (4) The Organization's decision on the claim of ownership shall be appealable before the High Commission of Appeal within 60 days as from the date of receipt of notice of the decision by the interested parties.
- (5) The Organization shall transfer the application for registration to the claimant in so far as the aforementioned claim of ownership is valid.
- (6) The final decision on transfer of the application shall be published in the special register of the Organization.

Article 20

Examination of the application for a plant variety certificate and technical examination of the variety

- (1) The Organization shall examine the application as to form and as to substance in order to verify, on the basis of the information supplied:
 - (a) that a filing date can be allocated in accordance with Article 16;
 - (b) that the documents in the application are complete and satisfy the requirements laid down in Articles 13 and 14;
 - (c) that the application is not excluded under the provisions of Article 3;
 - (d) that the variety applied for is new.

- (2) If the items in the application are incomplete or do not conform, the Organization shall invite the applicant to put the application in order within three months as from the date of receipt of the notification. This period may be extended by 30 days, in case of justifiable need, at the request of the applicant or his agent. The application so corrected within the said period shall retain the date of the initial application. Any application not put in order within the time allowed shall be deemed not to have been filed.
- (3) A technical examination shall also be carried out, on the basis of growing trials and other necessary tests, to ensure:
 - (a) that the variety belongs to the taxon specified;
 - (b) that the variety is distinct, uniform and stable;
 - (c) and to establish, where the variety is found to satisfy the above conditions, the official description of that variety.
- (4) The technical examination shall be conducted by an authorized institution approved by the Organization.
- (5) Where the growing trials and other necessary tests have been carried out by the relevant service of a Contracting Party of the International Convention for the Protection of New Varieties of Plants, or are being carried out by that service, and the results can be obtained by the Director-General, the examination shall be based on those results.
- (6) The Organization shall determine the practical conditions for the technical examination.

Article 21

Information, documents and materials required for examination: examination fee

- (1) The applicant is required to provide all information, documents or material required by the Organization for the technical examination; failure to do so shall entail rejection of the application unless the applicant is able to give good grounds for his inaction.
- (2) The creator of a new plant variety may be required to submit additional information and documents to support his variety, together with the plant material required for the technical examination.
- (3) The cost of the technical examination shall be borne by the applicant and shall be paid directly to the Organization. The Organization shall establish a schedule of fees for the principal botanical taxa.

Article 22

Confidentiality of applications

- (1) Applications for plant variety certificates shall be kept secret by the Organization, the services and institutions involved in the procedures.

- (2) Access to information concerning applications shall be regulated. No information relating to applications may be disclosed without the consent of the breeder, except in special cases determined by the Organization.

Article 23

Grounds for rejection of applications

- (1) An application shall be rejected prior to registration if it is established that:
- (a) the applicant is not entitled to file an application;
 - (b) the applicant has not responded within the prescribed time limit to the rectification notices issued by the Organization, notably where:
 - (i) the information given was erroneous or incomplete;
 - (ii) the application contained a material irregularity;
 - (c) the variety to which the application refers:
 - (i) does not satisfy the requirements of Articles 4 to 8;
 - (ii) belongs to a botanical taxon that is excluded under Article 3;
 - (d) the applicant refuses or is unable to propose an acceptable denomination in accordance with the provisions of Articles 26 to 30 above.
- (2) The Organization shall notify its decision to the applicant, record it and publish a notice of rejection. This rejection decision shall be appealable before the High Commission of Appeal within 60 days as from notification of the rejection.
- (3) Notwithstanding the provisions of paragraph (1) above, the Organization may correct obvious clerical errors in the applications.

Article 24

Issue of plant variety certificate and publication

- (1) Where the Organization determines, as a result of the technical examination of the variety, that the variety satisfies the conditions set forth in Article 4 and that the applicant has met the other conditions set forth in this Annex, it shall issue a plant variety certificate bearing the following information:
- (a) the number of the certificate;
 - (b) the number of the filing;
 - (c) the filing date;
 - (d) the identity of the botanical taxon;

- (e) the denomination of the variety;
 - (f) the corporate name or name and surname of the owner of the plant variety, as well as his/its address;
 - (g) the validly claimed priority, if any.
- (2) The official technical description shall be attached to the plant variety certificate.

Article 25
Publication

- (1) The Organization shall publish, for each plant variety certificate, the information referred to in Article 24 above as well as the name and address of the agent.
- (2) The Organization shall also publish the official technical description of the variety.
- (3) The implementing regulations shall define the publication arrangements.

PART IV – VARIETY DENOMINATION

Article 26

Subject of the denomination and signs admissible as a denomination

- (1) The denomination shall constitute the generic designation of the variety.
- (2) A denomination may consist of any word, combination of words and figures and combination of letters and figures, with or without an existing meaning, provided that such signs serve to identify the variety.
- (3) Where a denomination has already been used for the variety in a Member State or in a Contracting Party of the International Convention for the Protection of New Varieties of Plants, or proposed or registered in a Member State or a Contracting Party, only that denomination may be used for the purposes of the procedure before the Organization, unless there are grounds for refusal under Article 27. Any synonyms shall be recorded in the register of applications and in the register of grants.
- (4)
 - (a) For as long as the variety is exploited, it shall be prohibited to use, on the territory of the Member States, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. The prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety.

- (b) The above prohibition shall also apply to denominations registered in the Contracting Parties of the International Convention for the Protection of New Variety of Plants.
- (5) Any person who offers for sale, sells or otherwise markets reproductive or vegetative propagating material of a protected variety shall be required to use the denomination of that variety. This obligation shall also apply to the varieties referred to in Article 32(4).
- (6) The obligation to use a denomination shall not end with the plant variety certificate that gave rise to it.
- (7) Prior rights of third parties shall not be affected.
- (8) Where a variety is offered for sale or otherwise marketed, it shall be permissible to use a trademark or service mark, a trade name or similar designation in conjunction with the registered variety denomination, subject to the denomination remaining easily recognizable.

Article 27

Reasons for refusal of a denomination

- (1) Without prejudice to the provisions of the International Convention for the Protection of New Variety of Plants and the rules adopted by the International Union for the Protection of New Varieties of Plants, a designation shall be refused registration as a denomination if it:

 - (a) does not conform to the provisions of Article 26;
 - (b) is not suitable for identifying the variety, notably for want of distinctiveness or linguistic suitability;
 - (c) is contrary to public policy or morality;
 - (d) is composed exclusively of signs or indications capable of serving, in the plant variety and seed sector, to denote the species, quality, quantity, intended purpose, value, geographical origin or time of production;
 - (e) is liable to mislead or confuse as to the characteristics, value or geographical origin of the variety, or as to the links between the variety and persons such as the breeder or the applicant; or
 - (f) is identical or confusingly similar to a denomination that designates, on the territory of one of the Member States, or of a Contracting Party of the International Convention for the Protection of New Varieties of Plants, an existing variety of the same or a closely related species, save where that existing variety is no longer exploited and its denomination has not acquired any particular significance.

(2)

- (a)** Without prejudice to the provisions of the Convention and the rules adopted by the International Union for the Protection of New Varieties of Plants, registration as a variety denomination shall also be refused for a designation comprising an element that hampers or is liable to hamper the free use of the denomination with respect to the variety, in particular any element the registration of which as a trademark for products associated with the variety would be refused under trademark law.
- (b)** Such designations shall be refused registration on the opposition of the owner of the rights in the element concerned, filed in writing with the Organization.

Article 28

Denomination registration procedure

- (a)** The denomination proposed for the variety for which protection is sought shall be filed at the same time as the application.
 - (b)** On payment of a special fee and the proposal of a provisional designation in the application, the applicant may defer the denomination registration procedure. In that case the applicant shall submit the proposed denomination within the time limit specified by the Organization. If no proposal is submitted within the time allowed, the application shall be rejected.
- (1)** The Organization shall publish the denomination proposal unless it notes the existence of a ground for refusal under Article 27(1) or has knowledge of a ground for refusal under Article 27(2)(a). The proposal shall also be communicated to the relevant services of the Contracting Parties of the International Convention for the Protection of New Varieties of Plants.
- (2)** The denomination shall be registered at the same time as the plant variety certificate is issued.

Article 29

Opposition to the registration of a denomination

- (1)** Any concerned person may, within the prescribed time limit, file opposition to the registration of a denomination based on any of the grounds for refusal set forth in Article 27.

The relevant services of the Contracting Parties to the Convention of the Union for the Protection of Plant Varieties may submit observations.

- (2)** Oppositions and observations shall be communicated to the applicant in order that he may respond to them or, where appropriate, submit a new proposal.

- (3) Where the proposal for a denomination does not conform to the provisions of Article 26, the Organization shall request the applicant to submit a new denomination proposal. If no proposal is submitted within the time allowed, the application shall be rejected.
- (4)
 - (a) The new proposal shall be subject to the review and publication process provided for in this article.
 - (b) Where the new proposal does not conform to the provisions of Article 26, the Organization may serve formal notice on the applicant to propose a denomination that does conform. If the applicant fails to do so, the application shall be rejected.
- (5) The Organization's decision on the opposition shall be subject to appeal to the High Commission of Appeal for 60 days from the receipt of notification of the decision to the persons concerned.

Article 30

Forfeiture of a denomination and registration of a new denomination

- (1) The Organization shall declare a registered denomination forfeit:
 - (a) if it proves that the denomination was registered in spite of the existence of grounds for rejection under Article 23;
 - (b) if the owner so requests, invoking a legitimate interest; or
 - (c) if a third party produces a court decision prohibiting the use of that denomination in connection with the variety.
- (2) The Organization shall advise the owner of the proposal to declare forfeiture and shall invite him to submit a proposal for a new denomination within the time limit specified. If the variety is no longer protected, the proposal may be made by the Organization.
- (3) The proposal for a new denomination shall be subject to the examination and publication procedure set forth in Article 28. The new denomination shall be registered and published once it has been approved; the former denomination shall be cancelled at the same time.

PART V – RIGHTS CONFERRED BY THE PLANT VARIETY CERTIFICATE

Article 31

General considerations

- (1) Under the conditions and within the limits laid down in this Annex, the plant variety certificate confers on its owner the exclusive right to exploit the variety to which it relates.

- (2) Under the conditions and within the limits laid down in this Annex, a plant variety certificate also confers on its owner the right to prohibit any person from exploiting the variety to which it relates.
- (3) The owner of a plant variety certificate moreover has the right to assign or transfer the certificate by succession and to conclude license contracts.
- (4) Subject to Article 39, the owner of a plant variety certificate has the right, in addition to all other rights, remedies and actions at his disposal, to institute legal proceedings against any person who infringes the rights that the plant variety certificate confers on the said owner by performing, without his consent, any of the acts referred to in Article 32(1), or who performs acts that make it probable that an infringement shall be committed.
- (5) The owner of a plant variety certificate also has the right, in addition to all other rights, remedies or actions at his disposal, to institute legal proceedings against any person who uses a designation in violation of Article 26(4) or who in violation of Article 26(5) fails to use a variety denomination.

Article 32

Scope of rights conferred by the plant variety certificate

- (1) Subject to Articles 33 and 34, "exploitation" means, for the purposes of this part, any one of the following acts carried out in relation to propagating material of a protected variety:
 - (a) production or reproduction;
 - (b) processing for the purpose of propagation;
 - (c) offering for sale;
 - (d) sale or other marketing;
 - (e) export;
 - (f) import;
 - (g) stocking for any of the purposes mentioned in (a) to (f) above.
- (2) Subject to Articles 33 and 34, "exploitation" also means, for the purposes of this part, acts as mentioned in paragraph (1)(a) to (g) carried out in relation to harvested material, including entire plants and parts of plants, obtained through unauthorized use of reproductive or vegetative propagating material of the protected variety, save where the owner has had reasonable opportunity to exercise his rights in relation to the said propagating material.
- (3) Subject to Articles 30 and 31, "exploitation" further means, for the purposes of this part, acts as mentioned in paragraph (1)(a) to (g) carried out in relation to products made

directly from harvested material of the protected variety covered by the provisions of paragraph (2) through unauthorized use of such harvested material, save where the owner has had reasonable opportunity to exercise his rights in relation to the said harvested material.

- (4)** The provisions of paragraphs (1) to (3) shall also apply to:
- (a)** varieties that are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;
 - (b)** varieties that are not clearly distinguishable from the protected variety as provided in Article 6; and
 - (c)** varieties whose production requires repeated use of the protected variety.

Article 33

Exemptions from rights conferred by the plant variety certificate

The rights conferred by the plant variety certificate shall not extend to:

- (a)** acts performed privately for non-commercial purposes;
- (b)** acts performed for experimental or research purposes;
- (c)** acts performed for the purpose of breeding other varieties and, save where the provisions of Article 32(4) apply, acts mentioned in Article 32(1) to (3) that are performed in relation to such other varieties;
- (d)** use by a farmer on his own holding, for the purposes of propagation, of harvested material that he has obtained by cultivating, on his own holding, a protected variety or a variety covered by Article 32(4)(a) or (b); this exception shall not apply to fruit, forestry or ornamental plants; and
- (e)** acts carried out by any third party in good faith prior to the filing of the application for a plant variety certificate.

Article 34

Exhaustion of rights conferred by the plant variety certificate

The rights conferred by a plant variety certificate do not extend to acts concerning material of the protected variety or a variety covered by Article 32(4) that has been sold or otherwise marketed on the territory of a Member State by the owner or with his consent or any material derived from such material, save where such acts:

- (a)** involve further propagation of the variety in question; or
- (b)** involve the export of material from the variety that can be used to propagate the variety to a country which does not protect varieties of the

plant genus or species to which the variety belongs, save where the exported material is intended for consumption.

Article 35

Market control measures

The rights conferred by a plant variety certificate shall be independent of measures adopted by Member States as a means of controlling on their territory the production, certification and marketing of variety material or the import or export of such material.

Article 36

Term of the plant variety certificate; maintenance of rights

- (1)** Subject to the provisions of paragraph (2) below, a plant variety certificate shall expire 25 years after its date of issue.
- (2)** For a plant variety certificate to be maintained, an annual fee shall be paid to the Organization in advance of each year, with the first fee due one year after the date of issue of the certificate. A six-month grace period shall be allowed for payment of the annual fee after the due date, subject to payment of the prescribed additional fee. If an annual fee is not paid in accordance with the provisions of this paragraph, the owner of the plant variety certificate shall forfeit his rights.

Article 37

Provisional protection

An applicant shall enjoy all the rights provided for in this part as from the filing of the application, provided that proceedings may not be instituted for damages occasioned through the fault of the defendant after publication of the application until the plant variety certificate has been issued.

Article 38

Restoration of protection

- (1)** Without prejudice to the provisions of Article 36(2) above, if the protection conferred by a plant variety certificate has not been renewed for reasons beyond the control of the owner, the owner may, on payment of the required annual fee and of a restoration fee, request that it be restored within six months of the date on which the said reasons ceased to obtain, and no later than within two years from the date on which renewal was due.
- (2)** The request for restoration of the plant variety certificate, accompanied by documentary evidence of payment of the fees referred to in the preceding paragraph, shall be filed with the Organization and shall set forth the reasons which, for the owner or his successor in title, justify restoration.
- (3)** The Organization shall examine the above-mentioned reasons and shall restore the plant variety certificate or reject the request if it does not consider the reasons justified.
- (4)** Restoration shall not have the effect of prolonging the term of the plant variety certificate.

- (5)** Restored plant variety certificates shall be published by the Organization in the manner prescribed by the implementing regulations.
- (6)** The decisions of the Organization with respect to restoration shall be subject to appeal to the High Commission of Appeal within 60 days of the date of receipt of the notification thereof.

Article 39

Exploitation by public authorities or by third parties authorized by them

(1)

- (a)** The government may decide that a variety shall be exploited, without the consent of the owner of the plant variety certificate, by a State service or by a third party designated by the government where:
 - (i)** the public interest, particularly the food supplies of the Member State concerned or public health, so demands; or
 - (ii)** a judicial or administrative body has ruled that the manner in which the owner of the plant variety certificate or his licensee exploits the variety is anti-competitive and the government is convinced that exploitation of the variety pursuant to this Article shall enable that practice to be remedied.
- (b)** Exploitation of a variety pursuant to this Article shall be subject to payment of equitable remuneration to the owner of the plant variety certificate.
- (c)** The government shall take the decision referred to above only if the following conditions are met:
 - (i)** the owner of the plant variety certificate has been put on formal notice to remedy the situation and has not taken the necessary steps within the prescribed time limit;
 - (ii)** the relevant State service or the designated third party is in a position to exploit the variety in a competent and efficient manner;
 - (iii)** three years have elapsed between the date of issue of the plant variety certificate and the date of the decision.
- (d)** When taking the decision referred to above, the government shall specify the manner in which the relevant State service or designated third party shall exploit the variety, particularly the authorized acts of exploitation, the duration of exploitation and the amount and terms of payment of the remuneration payable to the owner of the plant variety certificate.

(2) The government may require the owner of the plant variety certificate to make available to the relevant State service or designated third party, on payment of suitable remuneration, the quantity of propagating material required for reasonable use to be made of the authorization to exploit.

(3)

(a) At the request of the owner of the plant variety certificate, relevant State service or designated third party, the government may modify the conditions of the authorization to exploit the variety in so far as a change in the circumstances justifies such modification; propagating material required for reasonable use to be made of the authorization to exploit.

(b) The government shall terminate the authorization to exploit the variety prematurely, at the request of the owner of the plant variety certificate, if the relevant State service or designated third party fails to abide by the manner of exploitation specified by the government or does not exploit the variety in a competent and efficient manner;

(c) The government may extend the authorization to exploit the variety, after having heard the parties, if it is convinced, on the basis of a new examination, that the circumstances that led it to take the initial decision still obtain.

(1) An authorization to exploit a variety granted to a third party may not be transferred except with the enterprise or business of that third party or with that part of the said enterprise or business in which the variety is exploited.

(2) An authorization shall not exclude:

(a) exploitation of the variety by the owner of the plant variety certificate; or

(b) the conclusion of license contracts by the owner.

(3) Exploitation of the variety by the relevant State service or designated third party shall serve exclusively to supply the domestic market of the Member State.

(4) The parties shall be heard before any decision is taken under this Article. Such decision shall be subject to appeal to the competent administrative court.

PART VI – OBLIGATIONS OF THE OWNER OF A PLANT VARIETY CERTIFICATE

Article 40

Maintenance of the variety

(1) The owner of the plant variety certificate is required to maintain the protected variety or, where appropriate, its hereditary components, at his own expense, throughout the period of validity of the certificate.

- (2) At the request of the Organization, he is obliged to furnish to any authority designated by it, within the prescribed time limit and at his own expense, the information, documents or material deemed necessary for verifying the maintenance of the variety.

Article 41

Furnishing of samples

- (1) The owner of a plant variety certificate is required to furnish at his own expense to any authority designated by the Director-General, within the time allowed, suitable samples of the protected variety, or where appropriate of its hereditary components, for the purpose of:
- (a) establishing or renewing the official sample of the variety; or
 - (b) carrying out the comparative examination of varieties for the purposes of protection.
- (2) The owner of a plant variety certificate may be required to maintain or preserve the official sample himself.

PART VII – CHANGE OF OWNERSHIP AND FORFEITURE

Article 42

Change and division of ownership

- (a) The right to a plant variety certificate as well as the plant variety certificate *per se*, may be assigned or transferred by succession.
 - (b) Any change of ownership shall be recorded in writing. It shall also be registered by the Organization and shall not be binding on third parties unless recorded in the special register; the Organization shall publish a notice of the change of ownership.
- (1)
- (a) The owner of a plant variety certificate may grant exclusive or non-exclusive licenses.
 - (b) Any license shall be evidenced in writing and recorded in the special plant varieties register; it shall not be binding on third parties until it is registered and published by the Organization.

Article 43

Forfeiture

- (1) The Organization shall deprive the owner of his plant variety certificate if it is established that he has failed in his obligation under Article 40(1) and that the variety is no longer uniform or stable.

(2)

- (a)** The Organization shall also deprive the owner of his plant variety certificate:
- (i)** if the said owner does not respond to a request by the Director-General under Article 40(2) with regard to verification of maintenance of the variety; or
 - (ii)** if the Organization intends to declare the variety denomination forfeit and the owner does not propose a suitable denomination within the time allowed.
- (b)** Forfeiture may not be declared until the owner has been put on formal notice to meet the obligation incumbent on him within a reasonable period which shall have been notified to him.
- (c)** Forfeiture shall take effect on the date of its registration; the Organization shall publish a notice thereof.

PART VIII – PROCEDURAL TIME LIMITS

Article 44

Extension of time limits

Where the Organization deems such action justified by the circumstances, it may, on being so requested in writing, extend, on conditions that it shall specify, the time limit prescribed for performing an act or taking a step in accordance with the provisions of this Annex or of the Implementing Regulations by notifying its decision to the parties concerned. Extension may be granted even if the time limit concerned has expired.

PART IX – LEGAL ACTION

Article 45

Competent courts

- (1)** Civil actions relating to plant varieties shall be brought before the competent domestic courts and judged as summary proceedings.
- (2)** The domestic court competent in criminal matters, hearing an action for infringement, shall rule on the arguments advanced by the accused in his defense, on invalidation or forfeiture of the plant variety certificate, or issues relating to ownership of the certificate.

Article 46

Invalidation of the plant variety certificate

- (1)** Any person having a legitimate interest may file a request for invalidation with the Director-General.
- (2)** The court shall invalidate the plant variety certificate if it is established:

- (a) that the variety was not new or distinct on the filing date of the application or on the priority date, as appropriate;
 - (b) that, where the issue of the plant variety certificate was essentially based on information and documents submitted by the applicant, the variety was not uniform or stable on the aforesaid date.
- (3) An invalidated plant variety certificate shall be deemed invalid as of its date of issue.
- (4) The invalidation decision shall be notified to the Organization, which shall register and publish it.

Article 47

Claim of ownership before the court

- (1) If the plant variety certificate has already been issued, the claim of ownership shall be filed before the competent domestic court. In this case, the action shall lapse within three years from issuance of the registration certificate. Action brought against a defendant who acts in bad faith shall not be subject to any statutory limitations.
- (2) The decision on transfer of the certificate shall be notified to the Organization, which shall register and publish it. It shall notify this decision to any licensee whose name is entered in the special register.

Article 48

Infringement

- (1) Subject to Articles 33, 34 and 39, any of the acts referred to in Article 31 carried out on the territory of a Member State by a person other than the owner of the plant variety certificate and without his consent shall constitute an infringement.
- (2) Acts previous to publication of the issuance of the certificate shall not be considered as infringements of the rights conferred by the certificate. However, acts subsequent to the notification of the certified true copy of the certificate to the alleged offender may be established and prosecuted.
- (3) At the request of the owner of the plant variety certificate, or of the licensee where the licensee has invited the owner to institute legal proceedings and the owner has refused or failed to do so, the competent domestic court may grant an injunction for cessation of the infringement or prevention of an imminent infringement or perpetration of an act of unfair competition referred to in Annex VIII, and may award damages and order any other remedy provided for under domestic laws.
- (4) The owner of the certificate is eligible to participate in the proceedings initiated by the licensee in accordance with the preceding sub-paragraph.
- (5) Any licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in the action brought by the right holder.

- (6) The court may, at the request of a competent authority or of any other concerned person or association or union, particularly of breeders, seed producers or farmers, award the same remedies as in the case of an act of unfair competition referred to in Annex VIII.

Article 49

Prevention of infringement

- (1) Any person entitled to institute infringement proceedings may bring emergency legal proceedings before the competent domestic court seeking for all measures, including a fine, to be ordered against the alleged infringer or intermediaries at his service, to prevent any imminent infringement of the rights conferred by the certificate or prevent further perpetration of acts deemed to be infringing.
- (2) The competent domestic court may also order all urgent measures on application, when the circumstances do not require that such measures be taken adversarially, especially when any delay would cause irreparable harm to the applicant. Whether sitting in summary or on-demand proceedings, the court may order the requested measures only if the evidence, reasonably available to the applicant, suggests the likelihood that his rights have been infringed or that such infringement is imminent.
- (3) The competent domestic court may enjoin prosecution of the alleged infringement acts, make it conditional on the constitution of guarantees intended to ensure possible compensation for the applicant or order the seizure or delivery to third parties of the goods suspected to infringe the rights conferred by the certificate, in order to prevent their introduction into or circulation within the market.
- (4) Whether sitting in summary or on-demand proceedings, the competent domestic court may rule that execution of the measures it orders is conditional on the constitution of guarantees by the applicant to ensure the possible compensation of the defendant if the infringement action is subsequently deemed to be unfounded or the measures are cancelled.
- (5) When the measures taken to stop the infringement of rights are ordered prior to the initiation of substantive proceedings, the applicant must initiate civil or criminal proceedings within 10 days, with effect from the next day following the date of adoption of the measure. Failing this and at the request of the defendant, who shall not have to justify such request, the measures ordered shall be cancelled, without prejudice to the damages which may be claimed.

Article 50

Seizure for counterfeiting

- (1) Owners of plant variety certificates or of exclusive exploitation rights may, under an order from the presiding judge of the competent domestic court within the jurisdiction of which the action is to be taken, approach bailiffs or public or judicial officers, if necessary with the aid of an expert, to make a detailed description, with or without seizure, of allegedly infringing objects.

- (2) The order shall be given on a simple request to which is appended proof of registration of the plant variety certificate.
- (3) In the event of seizure, the judge may require the petitioner to deposit security prior to seizure.
- (4) Security shall be required in all cases where a foreigner requests seizure.
- (5) The holder of the objects that have been described or seized shall be provided with a copy of the order, and of the document attesting to the deposit of security where appropriate, in each case on pain of nullity and damages against the bailiffs or public or judicial officers, including customs officers.

Article 51

Time limit for instituting substantive proceedings

Where the petitioner fails to institute civil or criminal proceedings within 10 working days as from the seizure or description, or the information provided to him by the customs authorities, the seizure or description shall become null and void as of right, without prejudice to any damages that may be claimed.

Article 52

Quest for information

- (1) If petitioned to that effect, the competent domestic court sitting in civil proceedings as provided under this section may order, if necessary under financial compulsion, the submission of all documents or information held by the defendant in order to determine the origin and distribution networks of infringing goods or processes that violate the rights of the applicant, the communication of any documents or information held by the defendant or any person found to be in possession of infringing products or implementing infringing processes or providing services used in infringing activities or who has been reported to be involved in the production, manufacture or distribution of such products, the implementation of such processes or the provision of such services.
- (2) The documents or information sought include:
 - (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the products, processes or services, as well as the intended wholesalers and retailers;
 - (b) the quantities produced, sold, delivered, received or ordered, as well as the price obtained for the products, processes or services in question.

Article 53

Determination of damages

The court seized of the matter shall determine the amount of damages, taking into account the negative economic consequences, including loss of profits, suffered by the injured party, the profits made by the infringer and the moral prejudice caused to the rightholder as a result of the infringement.

Article 54
Penalties

Any person who knowingly commits an act of infringement under sub-paragraph (1) of article 48 or an act of unfair competition within the meaning of Annex VIII commits an offense and is liable to a fine of between 5,000,000 at 15,000,000 CFA francs or imprisonment of one to six months or both of these penalties, without prejudice to civil damages.

Article 55
Other penalties

- (1) The competent domestic court may order those items to which the infringement relates and which are held by the infringer to be confiscated, and where appropriate destroyed at the expense of the infringer where, in view of the circumstances, such action is necessary:
 - (a) to act as a deterrent to infringers; or
 - (b) to safeguard third-party interests.
- (2) The national competent court may also order that the devices or means specially intended for the perpetration of the infringement be confiscated and that the sentence be made public.
- (3) The infringing items and the devices or means that have been confiscated may be sold by public auction for the benefit of the State.

Article 56
Usurpation

Any person who improperly avails himself of the status of owner of a plant variety certificate or of an application for such a certificate shall be liable to a fine of 5,000,000 to 15,000,000 CFA francs. In the event of repetition of the offense, the fine shall be doubled.

Article 57
Extenuating circumstances

The provisions on extenuating circumstances in the domestic legislation of the Member States shall apply to the offenses referred to in this Annex.

Article 58
Conditions for the institution of criminal proceedings

Criminal proceedings for the application of the above penalties may be brought by the public prosecutor only on a complaint from the injured party.

Article 59
Fraud in relation to variety denominations

Any person who knowingly uses a designation in violation of Article 26(4) or who in violation of Article 26(5) fails to use a variety denomination shall be liable to a fine of between 2,000,000 and 5,000,000 CFA francs.

PART X – BORDER MEASURES

Article 60

Requested measures

- (1)** The customs department may, within the framework of customs control and at the written request of any of the individuals mentioned in Article 34 accompanied by proof of right, retain any goods which that party considers to be infringing.
- (2)** The customs department shall immediately notify the Prosecutor of the Republic, the requester and the declarant or owner that the goods have been detained at customs.
- (3)** Such detention at customs shall be automatically lifted if, within 10 working days following detention of the goods, the requester fails to justify to the customs authorities:
 - (a)** why the interim measures were taken; or
 - (b)** that civil or criminal proceedings have been instituted and the required guarantees, if any, have been provided to cover his potential liability in the event that the infringement is subsequently deemed to be unfounded.
- (4)** For the purposes of instituting the legal actions referred to in the preceding paragraph, the requester may obtain the names and addresses of the sender, importer and consignee of the detained goods, or of the owner as well as their quantity, notwithstanding the provisions on professional secrecy binding on the officials of the customs department.
- (5)** After expiry of the 10 days referred to in paragraph 3 above, when the decision suspending free circulation of the goods does not emanate from a judicial authority or an independent administration, the owner, importer or consignee of the goods may, on deposit of a bond, file for a stay of the decision.

Article 61

Ex-officio action

- (1)** Customs authorities may, ex officio, withhold goods when they have presumptive evidence that the goods infringe the rights of holders of plant variety certificates or of those who have exclusive exploitation rights. These authorities may, at any time, request the rightholder to provide any information that may assist them in the exercise of their duties.
- (2)** The rightholder, the importer or exporter shall immediately be informed of the detention.
- (3)** The customs authorities shall be liable in the event of unjustified detention unless they acted in good faith.

PART V – TRANSITIONAL AND FINAL PROVISIONS

Article 62

Maintaining the validity of plant variety certificates issued under the Bangui Agreement, Act of February 24, 1999

Any plant variety certificates issued under the Bangui Agreement of February 24, 1999 and its Annex X, shall remain in force for the entire duration specified in that Agreement, pursuant to this article.

Article 63

Acquired rights

- (1)** This Annex shall apply to applications for plant variety certificates filed as from the date of its entry into force, subject to the rights acquired under Annex X of the Bangui Agreement, Act of February 24, 1999.
- (2)** Applications for plant variety certificates filed prior to the date of entry into force of this Annex shall remain subject to the provisions applicable on the filing date of the said applications.
- (3)** However, the exercise of the rights deriving from plant variety certificates granted under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

Annex X of the Bangui Agreement, Act of 24 February 1999 is hereby repealed.