

**WORLD TRADE
ORGANIZATION**

IP/N/1/VEN/I/2
2 November 2000

(00-4616)

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: Spanish

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

BOLIVARIAN REPUBLIC OF VENEZUELA

The present document reproduces the text of Decision No. 344 of the Commission of the Cartagena Agreement on the Common Industrial Property Regime, notified by Venezuela under Article 63.2 of the Agreement (see document IP/N/1/VEN/1).

Decision No. 344–Common Provisions on Industrial Property
(of October 21, 1993)*

TABLE OF CONTENTS**

	<i>Articles</i>
Chapter I: Patents	
Section I: Patentability Requirements	1 to 7
Section II: Owners of Patents	8 to 11
Section III: Patent Applications	12 to 20
Section IV: Processing of the Application	21 to 33
Section V: Rights Conferred by the Patent	34 to 36
Section VI: Obligations on the Owner of the Patent	37 to 39
Section VII: Licensing	40 to 50
Section VIII: Legal Protection of the Patent	51
Section IX: Invalidation of the Patent	52
Section X: Lapse of the Patent	53
Chapter II: Utility Models	54 to 57
Chapter III: Industrial Designs	58 to 71
Chapter IV: Industrial Secrets	72 to 80
Chapter V: Marks	
Section I: Requirements for the Registration of Marks	81 to 86
Section II: Registration Procedure	87 to 101
Section III: Rights Conferred by Registration	102 to 107
Section IV: Cancellation of Registration	108 to 112
Section V: Invalidation of Registration	113
Section VI: Lapse of Registration	114
Section VII: Licensing and Transfer of Marks	115 to 117
Section VIII: Advertising Slogans	118 to 122
Section IX: Collective Marks	123 to 127
Chapter VI: Trade Names	128
Chapter VII: Appellations of Origin	129 to 142
Chapter VIII: Complementary Provisions	143 to 147
Final Provision	1
Transitional Provisions	1 and 2

* *Spanish title:* Decisión 344. Régimen Común sobre Propiedad Industrial.

Entry into force: January 1, 1994.

Source: *Gaceta Oficial del Acuerdo de Cartagena*, X–No. 142, of October 29, 1993.

Note: Translation by the International Bureau of WIPO.

** Added by WIPO.

Chapter I Patents

Section I Patentability Requirements

1. The Member Countries shall grant patents for inventions in all areas of technology, whether goods or processes, that are new, involve an inventive step and are industrially applicable.

2. An invention is new when it is not included in the state of the art.

The state of the art comprises everything that has been made available to the public by written or oral description, by use or by any other means prior to the filing date of the patent application or, where appropriate, of the priority claimed.

Solely for the purpose of determining novelty, the contents of a patent application pending before the competent national office and having a filing date or priority date earlier than the priority date of the patent application under examination shall likewise be considered part of the state of the art, provided that the said contents are published.

3. For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the country, or during the year before the priority date if priority has been claimed, provided that such disclosure is attributable to:

(a) the inventor or his successor in title;

(b) a competent national office which, in violation of the provisions applicable, publishes the contents of the patent application filed by the inventor or his successor in title;

(c) a third party who has obtained the information directly or indirectly from the inventor or his successor in title;

(d) manifest abuse to the detriment of the applicant or his successor in title;

(e) the fact that the applicant or his successor in title has displayed the invention at officially recognized exhibitions or fairs, or where for academic or research purposes it has been necessary to make it public in order to proceed with its development. In that case the person concerned shall submit, on filing the application, a statement attesting that the invention has actually been so displayed, and shall submit the appropriate certification.

4. An invention shall be regarded as involving an inventive step if, for a person in the trade with average skills in the technical field concerned, the said invention is neither obvious nor obviously derived from the state of the art.

5. An invention shall be regarded as industrially applicable when its subject matter may be produced or used in any type of industry, industry being understood as that involving any productive activity, including services.

6. The following shall not be considered inventions:

(a) discoveries, scientific theories and mathematical methods;

(b) subject matter that already exists in nature or is a reproduction thereof;

(c) literary and artistic works or any other aesthetic creation, and also scientific works;

(d) plans, rules and methods for the pursuit of intellectual activities, for the playing of games or for economic and business activities, and also computer programs or software;

(e) methods of presenting information;

(f) therapeutic or surgical methods for the treatment of human beings or animals, and methods of diagnosis.

7. The following shall not be patentable:

(a) inventions contrary to public policy, morality or proper practice;

(b) inventions that are clearly prejudicial to human or animal health, the preservation of plants or the conservation of the environment;

(c) animal species and breeds and essentially biological processes for the production or breeding thereof;

(d) inventions relating to matter that makes up the human body and to the genetic identity thereof;

(e) inventions relating to pharmaceutical products appearing in the List of Essential Drugs of the World Health Organization.

Section II Owners of Patents

8. The right to the patent shall belong to the inventor or to his successor in title.

The owners of patents may be natural persons or legal entities.

If two or more persons have made an invention jointly, the right shall be jointly held by both or all of them.

If two or more persons make the same invention independently of each other, the patent shall be granted to the person, or to the successor in title, who files the first application in respect of it or claims the earliest priority.

9. Where a patent application relates to an invention that has been unlawfully obtained from the inventor or from his successors in title, or where, by virtue of contractual or legal obligations, the owner of the patent has to be a person other than the applicant, any person having a legitimate interest may, up to three years following the grant of the patent, claim the status of true owner before the competent judicial authority.

10. Without prejudice to the provisions of the national legislation of each Member Country, in the case of inventions occurring in the course of employment relations, the State employer, whatever its form and nature, may transfer part of the economic benefit deriving from the innovations to the employee inventors with a view to promoting research activity, as provided in the laws of the country concerned.

Entities that receive State funding for their research shall reinvest part of the royalties received from the marketing of inventions, with a view to accumulating a continuous supply of research funds and stimulating researchers by giving them a share in the proceeds from innovations, in accordance with the legislation of each Member Country.

11. The inventor shall have the right to be mentioned as such in the patent, and may likewise object to being so mentioned.

Section III Patent Applications

12. The first application for a patent validly filed in a Member Country, or in another country that accords reciprocal treatment to applications from Member Countries of the Cartagena Agreement, shall confer on the applicant or on his successor in title a right of priority for a period of one year following the date of the said application, for the filing of a patent application for the same invention in any of the Member Countries of the Cartagena Agreement. The latter application shall not seek to claim priority in respect of subject matter not included in the former application.

13. Applications for patents shall be filed with the competent national office and shall contain:

- (a) the identity of the applicant and of the inventor;
- (b) the title or name of the invention;
- (c) a clear and full description of the invention such as will enable a person skilled in the art to carry it out; for inventions that relate to live material, where the description does not afford sufficient detail in itself, a deposit of the said material shall be made at a depositary institution authorized by the competent national offices; the material deposited shall form an integral part of the description; the Member Countries shall enact provisions governing the making of deposits, including, among other aspects, the necessity and desirability of making such deposits, the duration thereof, the replacement of material and the supply of samples; the Member Countries may recognize research centers located on any of their territories as depositary institutions;
- (d) one or more claims specifying the subject matter for which patent protection is sought;

(e) an abstract stating the object and purpose of the invention;

(f) proof of payment of the prescribed application fee.

Failure to comply with any of the requirements specified in this Article shall cause the competent national office to regard the application as not having been accepted for processing, and no filing date shall be assigned to it.

14. The following shall accompany the application at the time of filing:

- (a) whatever powers of attorney are necessary;
- (b) a copy of the first patent application where priority is claimed, with an express mention of the priority;
- (c) any other requirements laid down by the domestic legislation of the Member Countries.

15. The patent may relate to one invention only or to a group of inventions so related as to constitute a single inventive concept.

16. Products or processes already patented and included in the state of the art within the meaning of Article 2 of this Decision may not be the subject of new patents on the sole ground of having been put to a use different from that originally contemplated by the initial patent.

17. The applicant may amend his application, but the amendment may not involve any broadening of the scope of the invention or of the disclosure made in the application as filed.

The applicant may, at any time prior to publication, request the conversion of his application to another type of industrial property right for the protection of the same subject matter.

18. The competent national office may, at any stage in the processing, as a result of its consideration of the application, propose to the applicant that he change the type of industrial property right applied for. The applicant may accept or reject the proposal on the understanding that, if he rejects it, the processing of the application for the type of right originally applied for will continue.

19. Where conversion is requested or a proposal to change the application is accepted, the requisite documents shall be filed and the procedure corresponding to the new type of right shall be observed.

20. The applicant may divide his application into two or more, but none of them may have the effect of broadening the scope of the invention or of the disclosure in the application as filed.

Every divisional application shall be accorded the same filing date as the original application in any Member Country.

Division of the application by the applicant shall take place prior to publication, and at any stage in the proceedings at the request of the competent national office.

Where division is requested or a division proposal is accepted, the requisite documents shall be filed and the procedure corresponding to the new type of right shall be observed.

Section IV *Processing of the Application*

21. When the application has been accepted for processing, the competent national office shall examine, within 15 working days following filing, whether it meets the conditions of form specified in this Decision.

22. If it emerges from the examination that the application does not fulfill the requirements referred to in the preceding Article, the competent national office shall make the appropriate comments, so that the applicant may give his reply to them or supplement his application within 30 working days following the date of notification. The said period may be prolonged once for the same number of days without loss of priority.

If, on expiration of the period specified, the applicant has not replied to the comments or has not supplemented his application and complied with the conditions of form, the application shall be considered abandoned.

23. Within 18 months following the filing date of the application or the date of any priority claimed, and on completion of the examination as to form referred to in Article 21, the competent national office shall publish the appropriate notice in conformity with the provisions laid down by each Member Country for the purpose.

24. The application file may not be consulted by third parties as long as the publication referred to has not taken place, except where written consent has been obtained from the applicant. Once publication has taken place, the file shall be public and may be consulted.

Any person who proves that the applicant for a patent has sought to assert rights deriving from the application against him may consult the file prior to publication and without the consent of the said applicant.

25. Within 30 working days following the publication date, any person having a legitimate interest may make one submission of reasoned observations contesting the patentability of the invention, in conformity with the procedure provided for in the domestic legislation of the Member Country. Reckless observations may be punished if national legislation so provides.

26. If, within the period specified in the foregoing Article, observations have been filed, the competent national office shall notify the applicant so that he may, within 30 working days following the said notification, which period may be extended once by the same amount of time, present his arguments if he sees fit, submit documents or rewrite the claims or description of the invention. To that end the provisions of Articles 17, 18, 19 or 20 of this Decision, as the case may be, shall be applicable.

27. On expiration of the periods specified in Articles 25 or 26, as the case may be, the competent national office shall proceed to examine whether or not the subject matter of the application is patentable.

If, in the course of the substantive examination, it is found that there is a liability of total or partial violation of the acquired rights of third parties, or that additional or complementary particulars or documents are required, the applicant shall be called upon in writing to present, within a maximum period of three months following the notification, those arguments and clarifications that he considers relevant, or to file the required information or documents. If the applicant fails to comply with the requirement within the period allowed, his application shall be considered abandoned.

28. The competent national office may solicit reports from experts or from scientific or technological bodies considered suitable, so as to have their opinion on the novelty, inventive step and industrial applicability of the invention. It may likewise, if it sees fit, solicit reports from any of the competent national offices of the other Member Countries or from non-member countries.

29. If the final examination is favorable, the patent shall be granted. If it is partly unfavorable, the patent shall be granted only in respect of those claims that have been accepted. If it is entirely unfavorable, the grant of a patent shall be refused.

30. The patent shall have a term of 20 years following the filing date of the corresponding application.

31. For the purposes of the organization and classification of patents, the Member Countries shall use the International Patent Classification.

32. The Member Countries shall undertake to keep each other informed and to inform the Council of patents granted or denied by their competent national offices. To that end, the Council shall supply the Member Countries with the requisite standards or formats for the exchange of the said information.

33. Any patented subject matter shall bear a notice giving the number of the patent, preceded visibly by the