

**Democratic Republic of Congo****Industrial Property****Law No. 82-001 of January 7, 1982****Table of Contents**

<b>Part 1 – Preliminary provisions.....</b>	<b>2</b>
<b>Part 2 – Inventive activities.....</b>	<b>2</b>
Title 1 – Inventions.....	2
Title 2 – Industrial designs.....	17
<b>Part 3 – Distinctive signs and names.....</b>	<b>20</b>
Title 1 – Marks.....	20
Title 2 – Trade and geographical names.....	23
<b>Part 4 –Miscellaneous, transitional and final provisions.....</b>	<b>25</b>

## **Part 1 – Preliminary provisions**

**Art. 1.-** This Law shall govern industrial property as an intellectual right while, however, excluding literary and artistic property, for which there is special legislation.

Industrial property right is defined as the body of provisions regulating the conditions and arrangements:

- for the grant and registration of the works covered in Article 2, paragraph 2;
- for the exercise of the right and obligations relating to the use of these works; and
- for the repression of unfair competition.

**Art. 2.-** Industrial property shall be protected by the conditions and arrangements provided for in this Law.

Inventions, industrial designs, distinctive signs, trade and geographical names as well as signs may be the subject of an industrial property title called, depending on the case, a patent or a registration certificate.

The discoveries referred to in Article 13 may be the subject of a title called an incentive certificate.

**Art.3.-** Nationals of non-member countries of the International Union for the Protection of Industrial Property whose domicile or establishment is located outside the Democratic Republic of Congo may only benefit from this Law if Congolese nationals benefit from reciprocity of protection in the application of the provisions of the Paris Convention for the Protection of Industrial Property.

## **Part 2 – Inventive activities**

### **Title 1 – Inventions**

#### **Chapter 1 – General provisions**

**Art.4.-** Under the conditions and within the limits set by this Law, an invention may be the subject of an industrial property title called a “patent”.

This instrument shall confer on its holder an exclusive right of temporary exploitation.

**Art.5.-** There shall be three types of patents: invention patents, import patents, and improvement patents.

Invention patents shall primarily cover inventions which, on the date of filing or of priority of the related application, have not yet been patented.

Import patents shall cover inventions for which, on the date of filing or of priority of the related application, the holder had already obtained an invention patent in a foreign country.

Improvement patents shall be those which concern any improvement of an already patented invention.

## **Chapter 2 – Patentable inventions**

**Art.6.-** Any new invention which, arising from an inventive activity, is capable of being exploited as the subject matter of industry or trade, shall be patentable.

**Art.7.-** Under this Law, an invention shall be considered new if it is not included in the prior art.

Prior art shall comprise, subject to what is stipulated in paragraph 3 of this Article, everything that was accessible to the public prior to the date of filing or the date of priority of the patent application, through a

written or oral description, use or any other means.

Novelty shall apply to a patent if such disclosure arises directly or by priority of the primary patent.

Nevertheless, the disclosure of this invention, in the six months prior to the filing of the patent application, shall not defeat the novel character of an invention, if such disclosure arises directly or indirectly, in addition to what is covered in Article 23:

- from a characteristic abuse toward the applicant or his predecessor in title;
- from the fact that the applicant or his predecessor in title displayed the invention in one or more official exhibitions or exhibitions recognized officially by the Democratic Republic of Congo.

Applicants as defined by Chapter 5 of this Title may, within a period of six months starting from the date of closure of the event, apply for protection and claim the right of priority from the day on which the patented object was displayed.

The novelty of an invention must further have as its subject a new means, a new application of a known means, a new

combination of known means, or a new product.

**Art.8.-** A means shall be considered new if it refers in particular to a new manufacturing process.

The patent shall in this case be limited to the use of this process and may not therefore prevent the same product being obtained by another means.

An application or a combination of known means shall be considered new if the means used produce a result different from the one they made it possible to obtain before.

The new combination may entail a joint functioning of assembled bodies which must cooperate to obtain a joint outcome. However, the mere juxtaposition of said bodies shall not be considered a new combination.

A product shall be considered new if it relates to an object featuring characteristics and advantages not found in previous similar products.

**Art.9.-** An invention shall be deemed to stem from an inventive activity if, in the view of an expert, it is not obvious from

the prior art, either in the means, application, combination of means or product that is the subject thereof, or in the result which it provides.

**Art.10.-** An invention shall be capable of being exploited as the subject matter of industry or trade if its subject matter may be produced or used in any kind of industry.

The term “industry” must be understood in the broadest sense of the term. It shall cover, in particular, crafts, agriculture, fisheries and services.

**Art.11.-** An invention concerning a drug may only be patented if its subject matter is a product, substance or composition that has been presented for the first time as constituting a drug.

### **Chapter 3 – Non-patentable inventions**

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**Art.12.-** Subject to the provisions relating to Chapter 6 of this Title, and without prejudice to the express legal or regulatory provisions, the following shall not be considered patentable:

1. theoretical or purely scientific principles and conceptions;

2. creations of a purely ornamental nature;
3. financial or accounting methods, game rules and all other systems of an abstract nature, in particular programs or series of instructions for the sequence of operations of a calculating machine;
4. inventions whose publication or exploitation would be contrary to public order, State security or morality.

#### **Chapter 4 – Special provisions for discoveries**

**Art.13.-** According to this Law, discovery shall occur when, for a non-inventive activity, the conclusion is to observe the existence of an object which already exists but whose exploitation has never been made public.

This Article shall not cover scientific discoveries according to the Geneva Treaty on the International Registration of Scientific Discoveries.

Non-inventive activity shall be defined as activities other than those referred to in Article 9.

**Art.14.-** Discoveries may be the subject of a title called an “incentive certificate”.

Incentive certificates shall be issued to the author or holder of the discovery and shall give him the right to a reward, in accordance with the conditions and arrangements to be determined by enabling measures.

Nevertheless, incentive certificates shall only be granted for useful discoveries.

#### **Chapter 5 – Filing and grant of patents and incentive certificates**

**Art.15.-** Applications for patents or incentive certificates shall be filed subject to the forms and conditions set in this Law and in its enabling measures.

**Art.16.-** The filing of applications must include, in particular:

1. the name or trade name and address of the holder, the author and, as the case may be, the agent;
2. a clear and complete description of the invention or the discovery. With regard to the invention, the description must be illustrated, where appropriate, by drawings which are necessary for persons skilled in the art to understand and make said invention;

3. the subject matter of the invention or discovery;
4. in the case of an invention, the claim(s) defining the scope of the requested protection. Such claims may not go beyond the content of the description;
5. information relating to titles granted abroad, as the case may be;
6. the International Patent Classification;
7. proof of payment of the fees due at the time of filing the application or claiming priority.

**Art.17.-** Applications for a patent or an incentive certificate shall be filed by the author or holder himself or by his agent, by his own hand or by mail.

If filing is performed by an agent, it shall be accompanied by a duly established power of attorney, called a “special power of attorney”. In this case, this power of attorney must mention the elements which make up the file.

**Art.18.-** Non-Congolese applicants who are domiciled abroad shall be obliged to indicate an address for service with a Congolese agent and to work through him.

**Art.19.-** Industrial property agents must have received prior authorization, on the basis of their good repute, ethics and skill

in the field, from the competent authority or its delegate.

Such authorization may be withdrawn at any time, for serious misconduct.

The Ministry responsible for industrial property shall keep and publish regularly the list of authorized or delisted agents. This list shall give the names and addresses of said agents.

**Art.20.-** According to this Law, industrial property advisors and any other person displaying in-depth knowledge in the field of industrial property may be recognized as agents.

**Art.21.-** In addition to representation, industrial property advisors shall have the role of advising or assisting any person interested in the field of industrial property.

**Art.22.-** If two or more applications have been filed on the same day for the same subject matter, seniority shall be conferred on the filing which benefited from a temporary advance.

**Art.23.-** If an author or holder undertakes to exploit his invention without proceeding to file, said author or holder shall have six

months maximum, starting from the beginning of the exploitation, to rectify the situation. Once this deadline has expired, the filing shall be deemed inadmissible.

**Art.24.-** Applications for patents or incentive certificates shall be filed with the Ministry responsible for industrial property.

The *ad hoc* services of the regional administration may, as far as they are concerned, register applications relating to filings then transmit them to the Ministry responsible for industrial property, according to the conditions and arrangements to be determined by the enabling measures of this Law.

**Art.25.-** The Ministry responsible for industrial property shall keep a record mentioning, in addition to proof of payment of the filing fee and of the first annuity, the day, month, year, time and minute at which the application and the accompanying documents were received. If filing is made in person, the record shall be countersigned by the applicant, who shall receive a copy thereof.

**Art.26.-** The Minister responsible for national defense and security or his delegate may, on a confidential basis,

acquaint themselves on site with applications for patents or incentive certificates at the Ministry responsible for industrial property.

Any applicant may, within the time limit provided for by Article 28, withdraw his application or request the postponement of the grant of the patent or incentive certificate. In any event, this may not exceed a term of six months starting from the filing.

**Art.27.-** Any applicant may, within the deadline provided for by Article 28, withdraw his application or request the postponement of the grant of the patent or incentive certificate.

In any event, postponement may not exceed a period of six months starting from the filing.

**Art.28.-** The Ministry responsible for industrial property shall have the following time limits for admissibility to rule on applications received:

1. three months for applications made from the national territory;
2. five months for applications from abroad.

These time limits shall start from the receipt, by the competent Ministry, of the filing of the application.

**Art.29.-** During the period of admissibility, any applicant may modify his application and submit new wording for his claims. Unless the applicant decides otherwise, the file concerning the application for a patent or an incentive certificate shall not be made public prior to the expiration of the above-mentioned time limit.

**Art.30.-** After an administrative examination of the file, the Minister responsible for industrial property shall rule on the admissibility of the application or reject the application.

In case of rejection, notification shall be given to the applicant.

Notwithstanding, subject to what is stipulated in paragraph 4 of this Article, if an application does not comply with the conditions and arrangements of form, as defined by this Law and its enabling measures, the Minister responsible for industrial property may invite the applicant to regularize said application within six months, starting from the modification of this invitation.

In any event, once it has been established that a patent application has already been the subject of a filing in a foreign country on which a decision has not yet been taken, the competent Ministry shall postpone the grant of title.

**Art.31.-** Patents and incentive certificates shall be granted without prior examination of the merits, at the risk of the applicant and with no guarantee as to the reality, novelty or merits, depending on the case, and as to the accuracy of the description, without prejudice to the rights of third parties.

Without prejudice to the provisions of the previous paragraph, the grant of patents or incentive certificates concerning the food or pharmaceutical sectors shall be subject to a prior examination on the merits.

In any event, at the express request of the applicant, the Ministry responsible for industrial property may have any competent body examine said filing, at the applicant's expense.

**Art.32.-** Only a single patent or incentive certificate may be granted for the same invention or discovery.



Applications for patents or incentive certificates must concern a single invention or discovery or a group of inventions or discoveries, provided that these inventions or discoveries are related to each other in such a way as to form a unit.

Claims relating to an invention or group of inventions may concern, simultaneously or not, one or more means, one or more applications of means, or one or more products.

If an application concerns several inventions, it must be divided within the same time limit as that provided for the period of admissibility, if the competent Ministry or the applicant so requests.

Divisional applications shall benefit from the date of filing and, as the case may be, the date of priority of the initial application.

**Art.33.-** Once the prescribed formalities have been performed, the holder, his agent or his successor in title shall be issued with the original of the patent or incentive certificate, to which shall be attached a copy of the descriptive summary of the invention or discovery and, as the case may be, the duly numbered drawings concerning this description.

**Art.34.-** Decisions to grant a patent or incentive certificate shall be taken by the competent authority or his delegate.

**Art.35.-** Subject to the provisions of Articles 28 and 30, patents and incentive certificate shall be granted in the order in which the corresponding applications were filed.

**Art.36.-** Subject to what is stipulated in the Chapter relating to secret inventions and discoveries, patents shall be granted respectively for the following periods, starting from the filing of the application:

1. 20 years for invention patents;
2. 15 years for invention patents concerning drugs.

**Art.37.-** Import patents and improvement patents shall come to an end at the same time as the primary patent to which they are attached.

**Art.38.-** Patents may also end by express written and authenticated waiver, addressed to the Ministry responsible for industrial property.

Waivers may be total or partial.

The author of the waiver shall be notified by the Ministry responsible for industrial property.

The waiver may not infringe the rights acquired by third parties in the patents without their consent.

### **Chapter 6 – Secret inventions and discoveries**

**Art.39.-** Inventions and discoveries by Congolese nationals as well as those by foreigners residing in the Democratic Republic of Congo of particular significance for the national interest may be declared secret. They may concern any field, especially that of national defense and security.

**Art.40.-** If an invention or discovery is declared secret, the applicant shall be informed accordingly, without delay, by registered letter. From this moment on, the grant of the corresponding patent or incentive certificate shall be suspended, in addition to its being prohibited, unless there is an express authorization:

1. to make public the invention or discovery which is the subject of the

application for a patent or incentive certificate;

2. to disclose the industrial secret;

3. to file a corresponding patent application abroad. If, at the time of notification, the same invention has already been the subject of one or more patent applications abroad, the Congolese State shall solicit, under Articles 45 and 46, the postponement of the grant of the foreign patent;

4. to issue a copy of secret filings;

5. to exploit freely the secret invention or discovery.

**Art.41.-** The authorization referred to in Article 40 shall be granted by means of a decree issued by the Minister responsible for industrial property or his delegate, on the advice of the Minister of the Ministry concerned.

**Art.42.-** If they deem it necessary for the national interest, the Ministers of the Ministries concerned may temporarily organize the conditions for exploitation of the secret inventions or discoveries and those for implementation of the industrial secrets.

If it has been established that these measures are insufficient, they may temporarily ban the exploitation of the

secret inventions or discoveries or the implementation of the industrial secrets; reserve temporarily and exclusively or not for the State the right to exploit an invention patent or an incentive certificate; or oblige the party concerned to assign to the State full knowledge of a non-patented invention or industrial secret.

The provisions of Article 57 shall not apply to secret inventions and discoveries.

**Art.43.-** Within a period of six months, starting from the date of filing of the application for a patent or an incentive certificate, the Minister(s) referred to in Article 41 shall decide on the secret filing and shall notify his/their decision to the applicant without delay.

This period may not be extended more than twice.

In the event of extension, the applicant shall be notified accordingly. If no decision has been taken by the expiration of the deadlines provided for in paragraphs 1 and 2 of this Article, the applicant shall be entitled to compensatory payment proportionate to the damage suffered.

Failing amicable agreement, such compensation, regardless of the amount,

shall be set by the competent court, in accordance with this Law and its enabling measures.

**Art.44.-** The author or holder of a secret invention or discovery shall receive fair compensation, with the amount and payment modalities to be determined by the enabling measures.

**Art.45.-** Without prejudice to the provisions of Article 3 of this Law, reciprocity agreements may be concluded between the Democratic Republic of Congo and other States for the mutual safeguarding of the secrecy of inventions which are the subject of patent applications of interest for national defense or the security of their respective territories.

**Art.46.-** In the event that, in accordance with Article 45, a reciprocity agreement has been signed with the Congolese State covering the disclosure of an invention which is the subject of a patent application, the Minister responsible for industrial property or his Delegate shall refrain, at the request of this State or that of the applicant – which shall establish proof of the intervention – from communicating this invention to the public and from issuing copies, as long as this prohibition is in force.

**Chapter 7 – Rights and obligations  
attached to patents and incentive  
certificates**

**Section 1 – Rights**

**Art.47.-** Subject to Article 51, the right to the patent or incentive certificate shall belong to the holder of the invention or discovery or his successor in title.

If an invention or a discovery has been made by several persons independently of each other, the right to the patent or incentive certificate shall belong to the person who first filed an application for a patent or incentive certificate for this invention or discovery or who validly claimed priority for his patent application.

If an invention or a discovery is made in common by several persons, the right to the patent or incentive certificate shall belong to them jointly.

**Art.48.-** Subject to the provisions relating to secret inventions and discoveries, the patent holder shall be entitled to:

1. prohibit third parties from engaging in the activities covered by the patent consisting notably in:
  - manufacturing the product which is the subject of the patent concerned;
  - using, introducing into the national territory, selling, offering for sale or putting on the market in another form the protected product as well as holding said product with a view to using it or putting it on the market;
  - using or implementing, selling or offering for sale, the patented process;
  - delivering or offering to deliver to a non license-holder means with a view to the implementation of a patented invention;
2. institute proceedings in the courts against anyone who infringes his rights, by manufacturing products, by employing means covered by the patent, or by displaying for sale or prohibiting on Congolese territory one or more counterfeit goods.

In any event, the author of an invention or a discovery shall be entitled to be mentioned as such in the patent or incentive certificate. The same shall apply to each of the co-authors.

**Art.49.-** The rights attached to patents shall only cover acts performed for industrial and commercial purposes and shall not cover acts performed in particular for the sole purpose of scientific research or certain preparations for laboratory lectures, made in an impromptu manner.

**Art.50.-** The rights of the holder of a patent or incentive certificate shall be assignable, grantable and transferable *inter vivos* or upon death, in whole or in part.

Acts involving assignment, granting or transmission of the rights inherent in patents or certificates must, on pain of invalidation, be recorded in writing and be entered in the register of patents or incentive certificates.

**Art.51.-** Unless specifically stipulated otherwise in the contract, the right in a patent for an invention made under a service contract shall belong to the employer.

In the event that an employee, through his employment contract, has not been tasked with an inventive activity, and that, by chance, he makes an invention by using the means made available by the employer, the invention shall belong jointly to the party concerned and to his employer.

In the former instance, the author of the invention shall be entitled to a bonus whose amount, nature and value in use shall be determined by the enabling measures.

**Art.52.-** In the case of an invention made jointly, and subject to what is stipulated in Article 51, each joint owner may exploit the invention in the proportion of his rights and take legal proceedings for his benefit in respect of infringements.

**Art.53.-** If a patent or an incentive certificate has been applied for, either for an invention or a discovery that has been taken from the holder or his successors in title, or in violation of a legal or treaty obligation, the injured party may claim the paternity of the application or the ownership of the title granted.

In the event that it succeeds, the action in respect of a claim shall effect the subrogation in favor of its author.

Should this be the case, the court shall order:

- either that the applicant transfer his rights and obligations to the successor in title within a set deadline, in which

case the transfer shall only have effect for the future;

- or that the successor in title be subrogated in all of the patented and certified rights and obligations of the applicant; should this be the case, the subrogation shall have retroactive effect.

## **Section 2 – Obligations**

**Art.54.-** The holder of a patent shall be obliged, on pain of disqualification, to exploit or have exploited industrially in the Democratic Republic of Congo the invention which is the subject of the patent, in an effective, serious and continuous manner.

The application measures shall clarify the notion of effective, serious and continuous industrial exploitation.

Such exploitation must take place within a period of:

1. five years starting from the filing of the application or three years starting from the grant of the patent, with the period which expires last to be applied, in the case of a primary patent or an improvement patent;

2. four years starting from the grant of the patent for patents concerning drugs, in the interests of public health;
3. three years starting from the filing of the application, in the case of an import patent. If the invention covered by the import patent is already exploited abroad, exploitation in the Democratic Republic of Congo shall occur in the two years starting from the filing of the application.

In any event, an extension of one year, renewable once, may be granted, at the request of the interested party, by decision of the competent authority or its delegate.

Such a request must be made and reach the competent Ministry before the expiration of the time limits set out in paragraphs 3, 10 and 30 of this Article.

**Art.55.-** In accordance with this Law, the exploitation of a patented invention shall consist in giving specific form to such invention, by means of effective technical exploitation according to the procedures to be determined by the enabling measures.

Notwithstanding, importing or packaging objects patented and manufactured abroad shall not constitute exploitation of an invention.

**Art.56.-** The holder of an improvement patent may not exploit his invention or have it exploited without the authorization of the holder of the primary patent.

Likewise, the holder of the primary patent may not exploit the improvement patent or have it exploited without the authorization of its holder.

**Art.57.-** The exploitation of a patent by third parties, whether natural persons or legal entities, shall take place in the conditions and according to the procedures provided for in Articles 64 to 87.

**Art.58.-** The seizure of a patent or an incentive certificate which has been the subject of a pledge shall be effected, *mutatis mutandis*, in accordance with Article 92.

The seizure shall render unenforceable for the attaching creditor any subsequent modification of the rights attached to the patent or incentive certificate.

**Art.59.-** Patents, certificates and licenses to work shall be registered, respectively, in the order in which they are granted, in registers of patents, certificates or licenses to work.

The Ministry responsible for industrial property shall also register changes in the names and addresses of holders as well as those of agents.

In any event, to be binding on third parties, all acts modifying the rights and obligations attached to an application for a patent or certificate, to a patent or certificate, must be entered in the ad hoc registers.

**Art.60.-** Patents, certificates and licenses to work shall only be binding on third parties once they have been published in the Official Gazette.

Such publication shall follow the order of their registration.

The Ministry responsible for industrial property may, for information purposes, keep a review specialized in the publication of patents, certificates and licenses to work.

**Art.61.-** The costs relating to the registration and publication referred to in Articles 59 and 60 may be set by enabling measures.

**Art.62.-** Without prejudice to what is stipulated in Article 54, the maintenance in force of the patent shall be subject to payment of the annual fees.

These fees shall be set during the periods provided for in Article 54, and shall be progressive above and beyond these periods.

Holders of an improvement patent shall be subject to the system of fixed fees, if they work their inventions themselves.

The setting of the amount of each of these fees as well as that of the various expenses shall lie within the regulatory domain.

**Art.63.-** In case of delay in the payments referred to in Article 62, a six-month grace period shall be granted to holders, subject to the payment of a surcharge on the fee due.

Nevertheless, the holder of a patent disqualified in these conditions may secure its restoration if he provides legitimate excuses and if he so petitions the competent Ministry, in the two months starting from the expiration of the grace period provided for in paragraph 1 of this Article.

Restoration shall only take effect if the patent holder has paid, within a period of two months starting from the act granting such restoration, an additional fee equal to double the amount of the fees to be paid.

The restoration of a patent may not infringe the rights of third parties.

### **Section 3 – Specific provisions for licenses to work**

**Art.64.-** In accordance with this Law, there shall be three kinds of licenses to work: voluntary licenses; non-voluntary licenses; and *ex officio* licenses.



*(1) Voluntary licenses*

**Art.65.-** “Voluntary license” shall be defined as one or more licenses to work which a patent holder may grant by contract to a third party.

Contracts for this kind of license must be drawn up in writing and shall require the signature of the contracting parties.

Each voluntary licensing contract must be deposited as an original and registered with the Ministry responsible for industrial property, subject to the payment of the registration fee.

Unless stipulated otherwise in the contract, said payment shall be at the holder’s cost.

**Art.66.-** Clauses contained in the licensing contracts relating to these contracts shall be null and void if they impose limitations on the licensee which do not arise from the rights conferred by the patent.

Nevertheless, the following shall not be considered limitations within the meaning of paragraph 1 above:

1. limitations concerning the measurement, scope, quantity, territory

or term of the exploitation of the subject of the patent;

2. limitations imposed by the licensor to ensure the best possible technical working of the invention;
3. the obligation imposed upon the licensee to refrain from any act likely to infringe the rights of the patentee.

**Art.67.-** Unless stipulated otherwise in the contract, voluntary licenses shall only be assignable and grantable with the patentee’s consent.

In the case of sub-licenses, the beneficiary shall be bound to refrain from performing any act likely to infringe the rights of the patentee or the licensee.

**Art.68.-** To grant a contractual license to a third party, a joint owner must have the agreement of all of the other joint owners or the authorization of the courts.

Each joint owner may transfer his share at any time.

Joint owners shall have a right of preemption for a period of three months, starting from notification of intent to transfer. Failing agreement on the price, it shall be set by the court, unless the seller withdraws his offer.

The provisions of this Article shall apply in the absence of stipulations to the contrary.

Joint owners may derogate therefrom, at any time, by means of co-ownership regulations.

**Art.69.-** The enabling measures may provide that the signature of certain categories of licensing contracts with foreigners, whether natural persons or legal entities, as well as their renewal or modification, shall require the express approval of the Minister(s) concerned, including the Central Bank of Congo, as the case may be.

## **(2) Non-voluntary licenses**

**Art.70.-** Within the meaning of this Article, a non-voluntary license may not be requested for failure to work industrially or insufficient working before five years, have elapsed, starting from the filing of the application for the patent or three years starting from the grant of the patent, with the period which expires last to be applied.

**Art.71.-** Any person may, upon the expiration of the periods and in the conditions provided for in Article 54,

request the benefit of a non-voluntary license.

**Art.72.-** Non-voluntary licenses shall in general be non-exclusive.

They may, however, be exclusive in the conditions and according to the procedures provided for in Article 79.

In the case covered in paragraph 1 of this Article, the patentee may not grant licenses or sub-licenses, as the case may be, on more advantageous terms than those stipulated in the non-voluntary license.

Any advantage granted in violation of the stipulations of the previous paragraph shall be revoked *ex officio*.

**Art.73.-** Applications for non-voluntary licenses shall be filed with the competent court. They must be accompanied by written justification providing that the applicant was not able to obtain a contract license from the patent holder.

Applicants must further prove that they are capable of working the invention so as to meet the needs of the market.

**Art.74.-** Before deciding on an application for a non-voluntary license, the court shall

summon and hear both parties. It may, as the case may be, request an opinion from the competent Ministry.

If the court grants the non-voluntary license, it must fix the conditions by stipulating in particular the field of application, term, scope of the rights and obligations and, barring an agreement between the parties, the amount of the fees to which it shall be subject.

The court's decision to grant a non-voluntary license shall be notified, by the clerk, to each of the parties and to the Ministry responsible for industrial property within 30 days of the judgment being handed down.

**Art.75.-** The conditions provided for in Article 74 may be revised, either at the request of two parties, or at the request of one of them, by the competent court.

**Art.76.-** The holder of a non-voluntary license shall not have any rights in the improvement patents attached to the original patent which is the subject of the non-voluntary license.

Nevertheless, he may, by following the procedure provided for the granting of

voluntary or non-voluntary licenses, work said patents.

**Art.77.-** Non-voluntary licenses may only be transmitted, even in the form of the grant of a sub-license, with the part of the firm or goodwill which exploits this license.

Any transmission of a non-voluntary license shall, on pain of invalidation, be authorized by the court which granted the license.

**Art.78.-** In the event that the holder of a non-voluntary license fails to meet the conditions on which this license was granted, the patent holder or any interested licensee may refer to the competent court a request for withdrawal of the license.

### ***(3) Ex officio licenses***

**Art.79.-** *Ex officio* licenses shall be non-voluntary licenses.

They shall be applied in any case where the working, be it absent or insufficient, in quality or quantity, could be detrimental to the country's economic development in particular and to the public interest in general.

*Ex officio* licenses may be worked by the State itself or by third parties acting on its behalf.

*Ex officio* licenses may be exclusive or non-exclusive.

Exclusive *ex officio* licenses may be granted for a maximum period of five years, provided that the patent concerned does not lapse or is not revoked for insufficient industrial working for an additional period of two years, starting from the expiration of the exclusive license.

**Art.80.-** Subject to what is stipulated in Article 82, the State may, at any time, starting from the grant of the patent, ask the Ministry responsible for industrial property to benefit from the regime of *ex officio* licenses.

**Art.81.-** The decision granting the *ex officio* license shall determine the conditions for the working of the license, in particular its exclusive or non-exclusive nature, its field of application, duration, the scope of the rights and obligations of the patentee and the licensee, and the amount of the fee to which it shall be subject.

In the event of disagreement between the parties, the amount of said fee shall be set by the competent court.

*Ex officio* licenses shall take effect starting from their notification.

**Art.82.-** The competent authority or its delegate may give those patent holders whose industrial working proves to be insufficient formal notice that they must undertake working in such a way as to meet the needs of the national economy.

In the event that this formal notice is not acted upon within a period whose duration is to be determined by the enabling measures in each case and, if the insufficient working undertaken is detrimental, in quality or quantity, to economic development or the public interest, the patent which is the subject of the formal notice may be subject to the regime of *ex officio* licensing.

The competent authority or its delegate may extend the period referred to in the previous paragraph if the person given formal notice proves that the circumstances which could justify the failure to work industrially or insufficient working are not attributable to him.

***(4) Provisions common to licenses to work***

**Art.83.-** Without prejudice to the provisions of Article 60, paragraph 1, all licenses granted must be registered with the Ministry responsible for industrial property within three months starting from the grant of the license.

**Art.84.-** The duration of a license to work may not in any case exceed that of the patent to which it relates.

**Art.85.-** A license to work may end by means of an express, written and authenticated waiver.

Waivers may not infringe the rights of the patent holder or those of third parties without their consent.

The provisions of Article 38, paragraphs 2 to 4, shall apply, *mutatis mutandis*, to licenses to work.

**Art.86.-** Unless expressly stipulated otherwise, the grant of an exclusive license shall prevent the owner of the patent from working the invention himself.

**Art.87.-** The assignment or grant of a license or sub-license to work patents must include the relevant know-how.

The provisions of this Article shall apply to any kind of assignment or grant, whether voluntary or forced, free of charge or on a paying basis.

**Section 4 – Counterfeiting**

**Art.88.-** Any deliberate infringement of the patentee's rights, as defined in Articles 4, 48, 56 and 67 of this Law, shall constitute the offense of counterfeiting which shall incur the civil and criminal liability of the author.

**Art.89.-** As a derogation to the provisions of Article 4 and in accordance with Article 49, acts prior to the publication of the patent shall not constitute counterfeiting and shall not warrant conviction, even in civil proceedings, with the exception, however, of acts subsequent to notification made to the presumed counterfeiter of an official copy of the invention description attached to the patent application.

**Art.90.-** Proceedings for counterfeiting shall be instituted by the patentee.

Nevertheless, the holder of an exclusive license shall also be entitled to institute

proceedings for counterfeiting within the limits of the damage he has suffered, unless the patentee has reserved the prerogative of instituting such proceedings.

In any event, the holder of an exclusive license shall only be entitled to institute proceedings for counterfeiting if, after being given formal notice, the patentee fails to take such action.

**Art.91.-** The patentee shall be entitled to participate in proceedings for counterfeiting brought by the patentee with a view to obtaining compensation for any damage he may have suffered.

Similarly, any exclusive licensee shall be entitled to participate in the proceedings for counterfeiting brought by the patentee with a view to obtaining compensation for any damages he may have suffered.

**Art.92.-** The beneficiaries of proceedings for counterfeiting in accordance with Article 90 may have the President of the competent court order precautionary measures, in particular, to have bailiffs, assisted or not by experts of their choice, make a detailed description, with or without seizure, of the allegedly counterfeit goods.

The order of the President of the competent court shall be handed down upon simple request, in the light of the documentary evidence.

Actual seizure shall give rise to the prior payment of a security whose amount shall be set via enabling measures.

If the claimant fails to bring an action before the competent court within a maximum period of three months, starting from the date of notification of the foregoing order, the description or seizure shall automatically be null and void, without prejudice to any damages which may be claimed.

**Art.93.-** The offense of counterfeiting shall be punishable by one to six months' imprisonment and a fine, the amount of which shall be fixed by enabling measures, or by only one of these penalties.

Second offenders shall be punishable by twice the maximum penalties provided for in the previous Article.

Within the meaning of this Article, a second offense shall be deemed to have occurred if the accused has already been convicted of counterfeiting in the last six years.

**Art.94.-** The public right of action for the imposition of penalties, provided for in Article 93, may only be initiated by the Public Prosecutor's Office, at the injured party's request.

Civil action based on counterfeiting shall only be admissible if the offense has been criminally established.

**Art.95.-** In case of a successful action for counterfeiting, the competent court shall order the cessation, by the counterfeiter, of any activity infringing the rights of the injured party.

At the request of the injured party and subject to the provisions of Article 114 of Ordinance-Law No. 68/248 of July 10, 1968 pertaining to Judicial Structure and Jurisdiction, as amended to date, the same court may award him damages for the harm suffered and/or order, for his benefit, the confiscation of the goods recognized as counterfeits and, as the case may be, the confiscation of the instruments or utensils intended specifically for their manufacture.

## **Chapter 8 – Invalidity and lapse of patents and certificates**

### **Section 1 – Invalidity**

**Art.96.-** Patents and incentive certificates may be the subject of invalidity proceedings.

Invalidity shall be pronounced by the competent court at the request of any interested party. However, the Public Prosecutor's Office may, as the main party or a participant, act *ex officio* in the case of invalidity of a patent or incentive certificate.

**Art.97.-** Invalidity shall be pronounced by the courts in all instances where:

1. in the case of a patent, it fails to meet the conditions defined by this Law, in particular Articles 6 to 12;
2. in the case of an incentive certificate, it fails to meet the conditions defined by this Law, in particular Article 14 and/or if its subject matter is unlawful, contrary to public order or morality;

**Art.98.-** Invalidity may be total or partial. By pronouncing the invalidity, the court shall simultaneously pronounce the resulting secondary invalidities.

**Art.99.-** In the event that invalidity occurs, it shall be retroactive, starting from the grant of the patent or certificate.

In any event and unless specifically stipulated otherwise, the injured parties may institute proceedings for the recovery of the price or fees paid to the patentee, if they prove that, due to him, they did not obtain the expected benefits from the use of the patent.

**Art.100.-** Any act pronouncing the final invalidity of a patent or certificate shall be notified, without delay, to the Ministry responsible for industrial property, which shall enter it in the ad hoc register and have it published in the Official Gazette.

### **Section 2 – Lapse**

**Art.101.-** Without prejudice to the provisions of Article 62, paragraph 1, the Ministry responsible for industrial property shall prescribe patent lapse proceedings for failure to work industrially or insufficient working in the event that the patent holder fails to prove that the circumstances which could justify the failure to work or insufficient working are not attributable to him. Nevertheless, such proceedings may

not be instituted before the expiration of a period of two years starting from the grant of the first non-voluntary license.

In any event, failure to communicate the know-how referred to in Article 87 shall result *ex officio* in lapse.

**Art.102.-** Lapse for non-payment of annuities shall lie within the remit of the Ministry responsible for industrial property, which shall notify the patentee.

**Art.103.-** Once lapse has become final, it shall only apply for the future.

It shall be published in the Official Gazette by the competent Ministry.

Notwithstanding, lapse due to failure to pay the annuities shall only be published once the grace period for restoration provided for in Article 63 has expired or the petition has been rejected.

### **Section 3 – Penalties**

**Art.104.-** Unjustly claiming an application for a patent, or incentive certificate or unjustly claiming to be the holder of a patent, or an incentive certificate or a



license to work, shall constitute an offense punishable by three months to one year's imprisonment and a fine, the amount of which shall be fixed by enabling measures, or only one of these penalties.

In the event of a second offense, the maximum penalties provided for by this Article shall be doubled.

**Art.105.-** Knowingly violating one of the prohibitions set out in Articles 40 and 42 shall also constitute an offense.

Such an offense shall be punishable, without prejudice to the more severe penalties provided for breaches of State security, by a fine, the amount of which shall be set by enabling measures. If the violation is prejudicial to national defense or State security, a sentence of one to three years' imprisonment may in addition be handed down.

## **Title 2 –Industrial designs**

### **Chapter 1 – General provisions**

**Art.106.-** This title shall only concern industrial designs which are original and

which are new and industrially or commercially applicable within the meaning, *mutatis mutandis*, of Articles 7 and 10 above.

**Art.107.-** For the purposes of this Law, an industrial design shall be defined as any combination of lines and/or colors designed to give any industrial or crafts object a special appearance.

An industrial design shall be defined as any three-dimensional form, whether or not associated with colors, as well as any industrial or crafts object which can be used as models for the manufacture of other units and which differ from similar objects or forms either by a separate and recognizable configuration giving it a character of novelty, or by one or more external effects giving it a specific and new appearance.

**Art.108.-** In case of conflict, the originality of an industrial design shall be determined by the competent courts.

The publicity given to an industrial design, prior to its filing, by its being put up for sale, shall not defeat the novelty of said design.

The enabling measures may prescribe provisions appropriate for certain industries with a view to allowing industrialists to establish their priorities, in particular by keeping private registers subject to administrative stamps.

**Art.109.-** The same creation may not at the same time be considered an invention and an industrial design.

Nevertheless, if the same creation is considered at the same time an industrial design and a patentable invention and the constituent elements of the novelty of the design are inseparable from those of the invention, only the provisions relating to inventions shall apply to this creation.

**Art.110.-** In any event, only industrial designs which have been duly filed shall enjoy the benefit of this Law.

**Art.111.-** The following shall not benefit from the protection referred to in Article 110:

1. any industrial design that is contrary to public order or morality;
2. any industrial design whose form was conceived for a technical or industrial purpose, to such an extent that it is inseparable from the result sought;

3. any slavish reproduction or imitation of an industrial design.

## **Chapter 2 – Filing, registration and publication of industrial designs**

**Art.112.-** The filing of industrial designs shall be in the form of a written application, subject to the conditions and arrangements, *mutatis mutandis*, of Articles 16, 18 to 22 and 24 to 26 of this Law as well as its enabling measures.

**Art.113.-** On pain of invalidity, the filing shall include in particular:

1. the names or trade names and addresses of the holder, the author and, as the case may be, the agent;
2. two identical copies of a specimen or photographic or graphic representation of the claimed object, possibly accompanied by an explanatory caption;
3. proof of payment of the fees due at the time of filing per object filed and, possibly, the renewal fee provided for in Article 122.

**Art.114.-** The same filing can include from one to 50 industrial designs numbered from first to last.

The industrial designs filed after 50 shall constitute a new numbering series.

The provisions of Article 31 shall apply, *mutatis mutandis*, to industrial designs.

**Art.115.-** Once the filing has been declared admissible, a certificate of registration shall be issued to its holder or his successors in title in accordance with the procedures provided for in Article 33.

Certificates of registration shall be equivalent to title for industrial designs.

**Art.116.-** Duly registered industrial designs shall be published, in accordance with Article 60.

Nevertheless, it shall be possible for the applicant, at the time of filing, to request postponement of registration for a period of not more than 12 months, starting from the date of filing or that of claiming of priority.

### **Chapter 3 – Rights and obligations attached to industrial designs**

#### **Section 1 – Rights**

**Art.117.-** The provisions of Articles 47, 52 and 53 shall apply, *mutatis mutandis*, to industrial designs.

**Art.118.-** If an industrial design has been commissioned, the person who has placed the order shall be considered, unless otherwise specified, the holder provided that the order has been placed with a view to industrial or commercial use of the product in which the design is incorporated.

Without prejudice to what is stipulated at the end of the first paragraph of this Article, if the same order has been placed jointly by two or more persons, they shall be considered co-owners.

**Art.119.-** Any owner of an industrial design which has been duly filed and registered or his successor in title shall enjoy, for a period of five years which can be renewed once, the exclusive right to work or have worked, to sell or have sold

this design subject to the conditions provided for by this Law, without prejudice to the rights of third parties, in particular the rights provided for in Articles 50 and 51, and which shall apply to industrial designs.

This right shall further entitle the right holder to oppose any manufacturing, import, sale, placing on sale, rental, offer to rent, exhibition, delivery, use or possession for one of these purposes, for an industrial or commercial aim, of a product which is identical in appearance to the industrial design as filed or which exhibits only secondary differences therewith.

In any event, the creator of an industrial design shall be entitled to be mentioned as such in the certificate of registration.

**Art.120.-** Exclusive rights, as defined in Article 119, shall be assignable and transmissible according to the same conditions and arrangements as those provided for in Title I relating to inventions.

**Art.121.-** Holders of industrial designs shall be entitled, to defend their rights, to institute proceedings for invalidity, priority

or counterfeiting, as regulated by Title I above.

## **Section 2 – Obligations**

**Art.122.-**The renewal of the registration of an industrial design shall be subject to the payment of a fee larger than the amount of the filing fee.

Requests for renewal must be made in writing and reach the Ministry responsible for industrial property before the expiration of the five-year period provided for in Article 119.

The renewal fee must be paid subject to the same conditions as those stipulated in the previous paragraph.

Nevertheless, this fee may be paid within a grace period of six months, starting from the expiration of the foregoing period, subject to payment of a surcharge.

**Art.123.-** No modifications may be made to duly filed and registered industrial designs either during the period of validity of their registration or at the time of their renewal.

## **Section 3 – Extinction of penalties**

## Title 1 – Marks

**Art.124.-** An industrial design may be terminated by means of an express, written and authenticated waiver. The provisions of Article 85, paragraphs 2 and 3 shall also apply, *mutatis mutandis*, to industrial designs.

**Art.125.-** Knowingly violating one of the prohibitions provided for in Article 119, paragraph 2 shall constitute the offense of counterfeiting.

**Art.126.-** Unjustly claiming an application for registration of an industrial design or unjustly claiming to be the holder of an industrial design shall constitute an offense punishable by one to six months' imprisonment and a fine, the amount of which shall be fixed by enabling measures, or by only one of these penalties.

In the event of a second offense, the maximum penalties provided for in paragraph 1 of this Article shall be doubled.

### **Part 3 – Distinctive signs and names**

#### Chapter 1 – General provisions

**Art.127.-** This Law shall govern all marks, known or not known at this date in legal and regulatory provisions, namely, factory marks, service marks, and the national guarantee mark.

Factory marks, trademarks and service marks may be collective or not, as defined in Article 140.

**Art.128.-** Within the meaning of this Law, a mark shall be any distinctive mark which makes it possible to recognize or identify various objects or services of any firm.

Such a sign shall be new if it has not yet been registered as a mark for the same product or service.

**Art.129.-** The purpose of the national guarantee mark shall be to certify, on its own and officially, the quality of Congolese merchandise.

Special legal or regulatory provisions shall specify, by category of goods, the conditions to which the use of said mark

shall be subjected, the monitoring of the goods' compliance with existing national standards and the related penalties.

In any event, the placing of certain tradable goods on the national market shall require the prior affixing of the national guarantee mark.

**Art.130.-** The Minister responsible for industrial property or his delegate shall be authorized to file free of charge, on behalf of the State, subject to the conditions provided for in Articles 128, 131 to 133, the mark referred to in Article 129.

**Art.131.-** The provisions of Article 110 shall also apply, *mutatis mutandis*, to marks.

**Art.132.-** Any material sign which meets the criteria set out in Article 128, *inter alia* a name, denomination, letters, figures or a combination of figures and letters, abbreviations, slogans, emblems, borders, combinations or arrangements of colors, drawings, reliefs and mottos may be used as a mark.

A mark must not resemble too closely the common name of the product, object or service or its essential qualities, or suggest qualities which the product does not have.

**Art.133.-** The following may not be considered marks within the meaning of Article 128:

1. signs whose use appears to be contrary to public order or morality as well as the signs listed below: coats of arms, flags and other emblems of the State, crosses, signs and official hallmarks of control and guarantee as well as any imitation of heraldic devices;
2. marks which contain indications likely to mislead the public; those which consist exclusively of terms indicating the essential quality of the product or its composition;
3. the ordinary, common descriptions in everyday use for the products, objects or services;
4. certain expressions which, without commonly and ordinarily describing the product itself, faithfully mirror the qualities or purpose; the same shall hold true, on the one hand, for banal laudatory expressions such as Extra Royal and Super; and on the other hand, for certain traditional emblems and packaging.

## **Chapter 2 – Filing, registration and publication of marks**

**Art.134.-** Marks shall be filed in writing, subject to the conditions and procedures, *mutatis mutandis*, provided for in Article 112 of this Law and its enabling measures.

**Art.135.-** On pain of invalidity, the filing of a mark must contain, in addition to proof of payment of the fees due at the time of filing:

1. the model of the mark containing a list of the products, objects or services, to which the mark applies;
2. the international classification corresponding to the mark;
3. the negative of the mark.

**Art.136.-** The right of priority attached to a prior filing made abroad must, on pain of invalidity, be claimed at the time of filing of the mark.

In no event may filings or claims of priority be declared admissible unless they are accompanied by the proof of payment provided for in Article 135.

The provisions of Articles 29, 115 and 117 shall also apply, *mutatis mutandis*, to marks.

**Art.137.-** Marks shall be registered for a period of ten years, starting from the date of filing. However, the national guarantee mark shall be filed in perpetuity.

The sign constituting the mark and the list of products or services it covers may not be modified either during the period of validity of the registration or at the time of its renewal.

Registration shall be renewable, upon request, for new periods of ten years in the prescribed forms and subject to payment of the ad hoc fee, the amount of which shall be set by enabling measures.

Renewal must be applied for during the last year of the period provided for in paragraph 1 of this Article.

### **Chapter 3 – Rights and obligations attached to marks**

**Art.138.-** The rights and obligations of the holder of a mark shall, by analogy, be the same as those provided for in Chapter 3 of Title II relating to industrial designs.

In any event, the holder of a mark must use his mark within a period of three years, starting from registration.

**Art.139.-** The filing of a mark shall be compulsory for any economic operator concerned.

Economic operator shall be defined as any natural person or legal entity performing in particular an industrial, commercial, agricultural or crafts activity.

#### **Chapter 4 – Collective marks**

**Art.140.-** Any grouping, body or community under public or private law, which has been legally constituted and enjoys legal status, may, for a purpose of general, industrial, commercial or agricultural interest, or to promote the development of the trade or industry of its members, acquire collective rights in accordance with the provisions of this Chapter.

**Art.141.-** A collective mark shall be any sign so designated at the time of filing and used to distinguish one or more common characteristics of products or services from different firms which affix said signs as a

mark, under the control of the grouping, body or community which holds the collective mark.

**Art.142.-** Without prejudice to the provisions of Chapters 1 and 2 of this Title, the exclusive right in a collective mark shall only be acquired if the filing of the mark is accompanied by a copy of the regulations for use and control.

On pain of invalidity, said regulations must mention the conditions on which depend the use of the mark, the common characteristics of the products and services the mark is intended to guarantee and the procedures for the control of these characteristics, combined with appropriate sanctions and subject to the right of anyone who can claim a prior right in a non-collective mark.

These same regulations may not contain provisions contrary to public order or morality.

**Art.143.-** A collective mark shall be affixed either directly, by the grouping, body or community which holds the mark, by way of control over certain products or objects, or by its members, under their supervision and on fixed conditions, to the products of their manufacture or of their



industry, or to the objects in which they trade.

**Art.144.-** Collective marks shall be registered in a special section of the national register of marks, with a mention of the serial number of the regulations for use and control.

**Art.145.-** Collective marks may only be assigned with the firm to which they are attached.

They may not be the subject of a grant, pledge or any enforcement measure.

**Art.146.-** Unless they are incompatible, the rights and obligations of the holders of the collective marks shall, *mutatis mutandis*, be the same as those of the owners of the non-collective marks.

**Art.147.-** In any event, holders of collective marks shall be bound to notify the Ministry responsible for industrial property of any modification to regulations for use and control of collective marks.

Such modification may only take effect after the notification referred to in paragraph 1 of this Article.

**Art.148.-** The right to bring legal proceedings to claim the protection of a collective mark shall be reserved for its holder.

Nevertheless, the regulations for use and control may grant persons authorized to make use of the mark the right either to act jointly with the holder or to be party to the proceedings brought by or against him.

The same regulations may also provide that the holder, acting on his own, may mention the special interest of users of the mark and take account, in his request for compensation, of the specific damage suffered by one or more of them.

#### **Chapter 5 – Invalidities and procedures for extinction of marks and penalties**

**Art.149.-** Any interested party, including the Public Prosecutor's Office, may institute invalidity proceedings for a mark that does not appear to comply with the provisions of Articles 128, 132, 133 and 142 of this Law.

**Art.150.-** The right in a mark shall be extinguished:

1. by a written, express and authenticated waiver, duly notified to the Ministry responsible for industrial property;
2. by the expiration of the period of registration;
3. by lapse for either non-payment of fees due or non-use subject to the conditions provided for in Article 138.

Nevertheless, subject to what is stipulated in Article 151, paragraphs 1 and 2, the holder of a lapsed mark may, in the five years following the extinction of said mark, have his rights restored, provided that the mark in question is still available.

Should this be the case, the holder must make a new filing subject to the conditions provided for in Articles 112 to 116. In addition, he must pay the fee, the amount of which shall be more than that of the renewal fee.

**Art.151.-** Without prejudice to the provisions of Article 150, paragraphs 2 and 3, already extinguished marks may be the subject of a new appropriation by third parties.

In any event, collective marks rendered invalid or lapsed may not be appropriated for the same products, objects or services

before expiration of a period of three years, by a new filing or be used for any purpose.

**Art.152.-** The provisions of Articles 125 and 126 shall apply, *mutatis mutandis*, to marks.

## **Title 2 – Trade names and geographical names**

### **Chapter 1 – Commercial denominations**

**Art.153.-** Subject to the provisions relating to marks, especially those of Articles 130 to 133, as well as those of specific legislations, a person engaged in industry or trade may choose a commercial denomination with a view to identifying his firm subject to the conditions of Articles 154 to 158.

**Art.154.-** Anyone seeking to claim an industrial property title to a commercial denomination must be the first to have made the filing with the competent Ministry, while complying, *mutatis mutandis*, with the conditions and procedures provided for marks.

The title so delivered shall confer a right of exclusive use on its holder.

**Art.155.-** Within the meaning of this Law, a commercial denomination may designate a trade name, company name or corporate name.

The trade name shall be a designation under which an economic operator, a natural person, engages in business or industry.

The company name shall be a name under which a legal entity engages in business or industry.

The corporate name shall be a corporate denomination including the surnames of one or more partners.

**Art.156.-** Any person who uses his own name to engage in business or industry shall use it as a trade name.

The use of one's own name as a trade name or corporate name may not infringe the rights of third parties.

In the event of homonyms, the person who is the last to use his name as a trade name or corporate name shall be bound to make the necessary adjustments to avoid any confusion, by adding other distinctive elements.

**Art.157.-** Trade names, company names and corporate names shall be assignable and transferable, inter vivos or upon death.

Nevertheless, a trade name may only be assigned or transferred with the goodwill to which it is connected.

**Art.158.-** The unlawful use, directly or indirectly, of a trade name, company name or corporate name belonging to a third party shall constitute an act of unfair competition punishable by the penalties provided for in Article 165, without prejudice to the penalties contained in other specific legislations.

## **Chapter 2 – Geographical indications**

**Art.159.-** Within the meaning of this Law, a geographical indication shall refer to either an appellation of origin or an indication of source.

An appellation of origin shall refer to a specific place – a locality, region or country – used to distinguish one or more products which come from that place and whose characteristics are essentially due to the geographical environment.

An indication of source shall refer to an expression or any sign used to indicate that one or more products come from a specific geographical place, locality, region or country.

“Product” shall be defined as any good (natural, crafts, agricultural or industrial) capable of meeting the needs of the nation.

**Art.160.-** Subject to the provisions of Article 10 of the Paris Convention and those of the Penal Code with regard to transfer, the direct or indirect use of an appellation of origin or an indication of source shall be governed by the provisions of Article 165.

The provisions of Article 154 shall also apply, *mutatis mutandis*, to appellations of origin and indications of source.

Enabling measures shall determine the procedures for the registration of appellations of origin and indications of source.

**Art.161.-** Appellations of origin or indications of source which are false or contrary to public order or morality may not be protected.

The provisions of Article 158 shall apply to appellations of origin and indications of source.

### Chapter 3 – Signs

**Art.162.-** A sign shall be an external signboard used by a merchant, industrialist or any other economic operator concerned with a view to characterizing his firm.

The sign may consist of an imagined name or a name taken from a kind of industry or business.

The provisions of Article 154 shall apply, *mutatis mutandis*, to signs.

**Art.163.-** Only original signs which are not contrary to public order or morality shall be protected.

Nevertheless, the reproduction of a product from the business engaged in may not be considered an original sign.

The provisions of Article 158 shall also apply to signs.

**Part 4 – Miscellaneous,  
transitional and final provisions**

**Title 1 –Miscellaneous provisions**

**Art.164.-** A fund for the promotion of inventions and discoveries in the Democratic Republic of Congo is hereby established.

This fund shall be managed by the Ministry responsible for industrial property.

The fund for the promotion of inventions and discoveries shall be supplied, *inter alia*:

- by an initial endowment, the amount of which shall be determined by enabling measures;
- by a surcharge which may not exceed 10 per cent of each fee or license fee provided for by this Law.

The other conditions and procedures for management of the fund shall be determined by enabling measures.

**Art.165.-** Subject to the provisions relating to counterfeiting and other specific texts, in

particular the Penal Code and the Code of Commerce, Ordinance-Law No. 41/63 of February 24, 1950 regulating unfair competition, as amended to date, shall apply to industrial property.

**Art.166.-** By way of derogation from the provisions of Ordinance-Law No. 68i248 of July 10, 1968, as amended to date, relating to the judicial system and jurisdiction, matters relating to industrial property shall fall within the jurisdiction of the higher courts.

**Art.167.-** Any dispute arising from the enforcement and/or interpretation of this Law shall fall under the jurisdiction of either the Ministry responsible for industrial property or the competent courts.

**Title 2 – Transitional provisions**

**Art.168.-** The industrial property rights arising from applications which have been duly filed prior to the entry into force of this Law shall remain valid, within the conditions and procedures set out in this Title.

**Art.169.-** Industrial designs and marks which have been duly registered before the

entry into force of this Law must, on pain of lapse, be confirmed in writing within a period of two years, starting from the publication of this Law in the Official Gazette.

Filings confirmed under the provisions of this Title shall benefit from the periods of protection provided for in Articles 119 and 137 respectively.

The confirmation referred to in this Article shall be subject to the payment of an ad hoc fee, the amount of which shall be determined by enabling measures.

**Art.170.-** The requests for confirmation referred to in Article 169 must be addressed to the Ministry responsible for industrial property, in accordance with the provisions of Articles 137 to 142.

**Art.171.-** Marks and industrial designs which have lapsed under existing laws and regulations relating to industrial property and patents in general may not be confirmed within the meaning of Article 169.

**Art.172.-** Non-Congolese agents who regularly discharge their duties, on their own or among themselves, in the Democratic Republic of Congo must,

starting from the entry into force of this Law, enter into partnership with the nationals of their choice, in accordance with the relevant legislation.

### **Title 3 – Final provisions**

**Art.173.-** Prior provisions relating to patents, marks and industrial designs are hereby repealed, in particular:

1. the Decree of the Sovereign King of October 29, 1886 on Patents, as amended to date;
2. the Decree of the Sovereign King of April 26, 1888 on Factory Marks and Trademarks, as amended to date;
3. the Royal Decree of April 24, 1922 on Filings of Industrial Designs, as amended to date;
4. any other provisions contrary to this Law.

**Art.174.-** This Law shall enter into force on the date of its enactment.