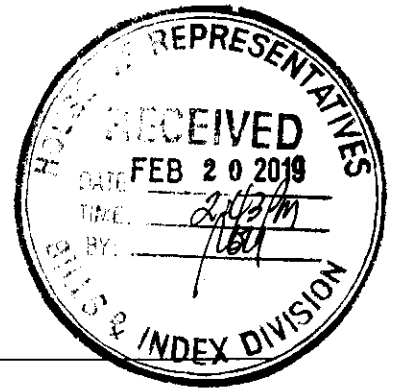


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Third Regular Session
HOUSE BILL NO. 9148



Introduced by REP. FERJENEL G. BIRON, M.D.

**AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293
ENTITLED "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND
ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS
POWER AND FUNCTIONS AND FOR OTHER PURPOSES"**

EXPLANATORY NOTE

House Bill No. ____ seeks to further amend the provisions of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines, as previously amended by Republic Act Nos. 9150, 9502 and 10372.

The legislative measure seeks to strengthen the Intellectual Property Office of the Philippines as the lead government agency in Intellectual Property, bolstering its organizational structure to maintain and implement effective, efficient, economical, responsive, technology-driven and sustainable services and programs; protection, enforcement and adjudication; promote and steer creativity, innovation, development, utilization and commercialization that would benefit micro, small and medium enterprises; enhance learning, advocacy; and support for the enhancement of digital infrastructure and interconnectivity. Salient changes in this regard include:

- Enhancing the functions of the Office of the Director General;
- Adding of a third Deputy Director General with an expertise in business management;
- Transforming two bureaus (the Documentation, Information, and Technology Transfer Bureau to become the Bureau of Innovation and Business Development; the Management Information Service to become the Information Technology Management Service) to enhance their strategic roles and functions in relation to the Office's mandate;
- Institutionalizing an Intellectual Property Academy and the National Committee on Intellectual Property Rights; and
- Modifying the jurisdiction of the Bureau of Legal Affairs.

The bill also incorporates changes on substantive law in the areas of patents, trademarks, copyright, and emerging intellectual property related fields to conform with international standards, trends and obligations and to implement national policies. Such changes include:

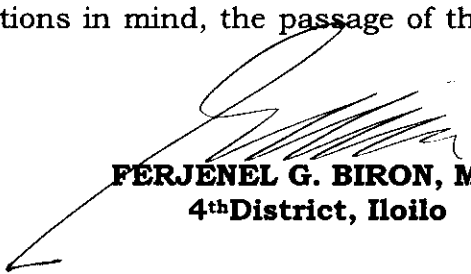
- Adopting a policy of international exhaustion for intellectual property rights to spur innovation, facilitate transfer of technology, boost business or commercial activity and access to information;
- Providing for secondary liability of infringement of IP rights for those persons who benefit directly or indirectly from the infringing activity, as provided herein;
- Allowing for parallel filing of applications for patents and utility models;
- Redefinition of the scope of protection of industrial designs;
- Introducing a new part on innovation and licensing, and on creativity, utilization, and commercialization of intellectual property;
- Clarifying the registrability of marks, certification, and collective marks;

- Adding the definition of “copyright”, “moral rights”, and “collective management organizations”, and in clarifying fundamental concepts thereof;
- Requiring the accreditation of collective management organizations with the IPOPHL;
- Updating provisions on limitations to copyright and related rights;
- Refining provisions for deposit and recordation of copyrighted works and providing for the cancellation of certificates of deposit and recordation;
- Redefining “broadcasting” and “communication to the public of a performance or sound recording” and defining “rebroadcasting” to incorporate to treaty language;
- Providing for “single equitable remuneration” for performers and producers of sound recordings;
- Clarifying further the limitations on the rights of performers, producers of sound recordings, and broadcasting organizations; and
- Updating provisions on infringement of copyright and related rights.

Furthermore, since the existing law is a consolidation of three (3) different laws put together (Rep. Act. 165, Rep. Act. 166, and PD 49) in 1997, and of the previous amendments which were necessary to comply with treaty obligations, this bill has rationalized and put into logical coherence the common provisions such as jurisdiction, remedies, and penalties and sanctions.

The amendment also seeks to correct typographical errors and inconsistencies as appearing in the current law, and organize the provisions to make it easier understood.

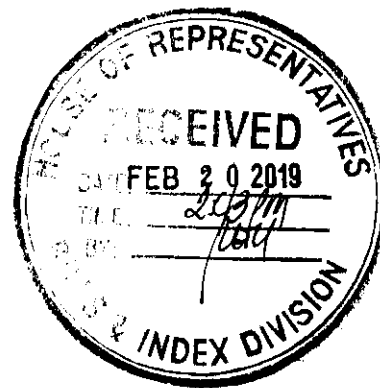
With the foregoing considerations in mind, the passage of this bill is earnestly requested.



FERJENEL G. BIRON, M.D.
4thDistrict, Iloilo

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**AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293
ENTITLED "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND
ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS
POWER AND FUNCTIONS AND FOR OTHER PURPOSES"**

*Be it enacted by the Senate and the House of Representatives of the Philippines
assembled*

SECTION 1. Sec. 2 of Rep. Act No. 8293, also known as the Intellectual Property Code
of the Philippines ("IP Code"), as amended by Rep. Act Nos. 9150, 9502 and 10372, is
hereby amended to read as follows:

SEC. 2. Declaration of State Policy. -

**A) The State recognizes that an effective intellectual [and industrial]
property system **PLAYS A PIVOTAL ROLE IN THE
ADVANCEMENT OF SOCIETY, INDUSTRY, AND THE
ECONOMY.** It is vital to the development of domestic and creative
AND INNOVATIVE activity;; **ENCOURAGES THE GROWTH OF
BUSINESS; STIMULATES TECHNOLOGICAL INNOVATIONS
AND** facilitates transfer of technology;; **AND** attracts foreign
investments;; and ensures market access for our products.**

[It]ACCORDINGLY, THE STATE shall protect and secure the
exclusive rights of scientists, inventors, artists and other gifted
citizens to their intellectual property and creations, particularly
when beneficial to the people, for such periods as provided in this
Act.

The use of intellectual property bears a social function. To this
end, the State shall promote the diffusion of knowledge and
information for the promotion of national development and
progress and the common good.

**B) TO FACILITATE THE TRADE OF INDUSTRIAL PROPERTY AND
ACCESS TO AND DIFFUSION OF INFORMATION PROTECTED
BY COPYRIGHT AND RELATED RIGHTS, THE STATE
ESPOUSES A REGIME OF EXHAUSTION OF INTELLECTUAL
PROPERTY RIGHTS FOR PRODUCTS SOLD IN THE
PHILIPPINES OR ANYWHERE ELSE IN THE WORLD BY OR
WITH THE CONSENT OF THE INTELLECTUAL PROPERTY
OWNER.**

**C) It is also the policy of the State to streamline administrative
procedures of registering patents, trademarks and copyright;; to
liberalize the registration on the transfer of technology;;[and] to
enhance the enforcement of intellectual property rights in the
Philippines; **AND TO PROMOTE THE USE OF ADVANCED AND
STATE-OF-THE-ART TECHNOLOGIES, INCLUDING ARTIFICIAL
INTELLIGENCE AND DATA ANALYTICS IN PROVIDING MORE
EFFICIENT AND QUALITY SERVICE TO THE PUBLIC.****

1 D) THE STATE LIKEWISE AFFIRMS ITS COMMITMENT TO
2 PROMOTE AND ENHANCE DIGITAL INFRASTRUCTURE AND
3 INTERCONNECTIVITY, AND IN FACILITATING DOMESTIC AND
4 INTERNATIONAL COMMERCIAL ACTIVITIES THROUGH THE
5 USE OF DATA MESSAGES AND ELECTRONIC DOCUMENTS
6 WHILE PROMOTING AND UPHOLDING THE RIGHTS GRANTED
7 UNDER THIS ACT. (n)

8
9 **SECTION 2.** Sec. 3 of the IP Code is hereby amended to read as follows:

10 SEC. 3. **APPLICABILITY OF** *International Conventions and*
11 **AGREEMENTS**[Reciprocity]. - Any person who is a national or who is
12 domiciled or has a real and effective industrial establishment in a
13 country which is a party to any convention, treaty or agreement relating
14 to intellectual property rights or the repression of unfair competition, to
15 which the Philippines is also a party, or extends reciprocal rights to
16 nationals of the Philippines by law, shall be entitled to benefits to the
17 extent necessary to give effect to any provision of such convention, treaty
18 or reciprocal law, in addition to the rights to which any owner of an
19 intellectual property right is otherwise entitled by this Act. [(n)] (a)

20
21 **SECTION 3.** Sec. 4 of the IP Code is hereby amended to read as follows:

22 SEC. 4. Definitions. -

23 **4.1. "INTELLECTUAL PROPERTY (IP)" REFERS TO CREATIONS OF**
24 **THE MIND AND INCLUDES:**

- 25 a) **INVENTIONS AND UTILITY MODELS;**
26 b) **INDUSTRIAL DESIGNS AND LAYOUT-DESIGNS**
27 **(TOPOGRAPHIES) OF INTEGRATED CIRCUITS;**
28 c) **TRADEMARKS, SERVICE MARKS, AND GEOGRAPHICAL**
29 **INDICATIONS; AND**
30 d) **WORK PROTECTED BY COPYRIGHT AND RELATED RIGHTS,**
31 **SUCH AS LITERARY AND ARTISTIC WORKS, AND**
32 **PERFORMANCES, SOUND RECORDINGS, AND BROADCASTS.**
33 (n)

34 [4.1]**4.2. The term "intellectual property rights" REFERS TO RIGHTS**
35 **[consists of]:**

- 36 a) **PROVIDED UNDER THIS ACT, SUCH AS PATENT RIGHTS,**
37 **TRADEMARK RIGHTS, AND COPYRIGHT AND RELATED**
38 **RIGHTS; AND**
39 b) **IDENTIFIED IN OTHER RELATED LAWS AND INTERNATIONAL**
40 **AGREEMENTS, SUCH AS GEOGRAPHICAL INDICATIONS AND**
41 **THE PROTECTION OF UNDISCLOSED INFORMATION.**

42 [a) Copyright and Related Rights;]

43 [b) Trademarks and Service Marks;]

44 [c) Geographic Indications;]

45 [d) Industrial Designs;]

46 [e) Patents;]

47 [f) Layout-Designs (Topographies) of Integrated Circuits; and]

48 [g) Protection of Undisclosed Information (4.1a) (n, TRIPS).]

49 **4.3. "INNOVATION" MEANS THE CREATION OF NEW IDEAS THAT**
50 **RESULTS IN THE DEVELOPMENT OF NEW OR IMPROVED**

**PRODUCTS, PROCESSES, OR SERVICES WHICH ARE THEN
SPREAD OR TRANSFERRED ACROSS THE MARKET. (N)**

[4.2.]**4.4** The term "technology transfer arrangements" refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market. (4.2)

[4.3.]**4.5** The term "Office" refers to the Intellectual Property Office created by this Act. (4.3)

[4.4.]**4.6** The term "IPO Gazette" refers to the **PRINTED OR ELECTRONIC PUBLICATION OF**[gazette published by] the Office under this Act. (4.4)

SECTION 4. Sec. 5 of the IP Code is hereby amended to read as follows:

SEC. 5. Functions of the Intellectual Property Office (IPO). - 5.1. To administer and implement the State policies declared in this Act, there is hereby created the Intellectual Property Office (IPO) which shall have the following functions:

a) Examine applications **AND**[for] grant of letters patent for inventions; and register utility models,[and] industrial designs, **LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS, TRADEMARKS AND OTHER MARKS OF OWNERSHIP, AND GEOGRAPHICAL INDICATIONS;** (5.1(a)a)

[b)] [Examine applications for the registration of marks, geographic indication, integrated circuits;]

[c)] **B)** Register technology transfer arrangements and settle disputes [involving technology transfer]**ON** payments **INVOLVING THE SAME**[covered by the provisions of Part II, Chapter IX on Voluntary Licensing] and develop and implement strategies to promote and facilitate technology transfer; (5.1(c)a)

[d)]Promote the use of patent information as a tool for technology development;]

[e)] **C)** Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered;

[f)]**D)** Administratively adjudicate **DISPUTES INVOLVING**[affecting] intellectual property rights; and (5.1(f)a)

E) Coordinate with other government agencies, **INSTITUTIONS**, and the private sector efforts to formulate and implement plans and policies to strengthen the **CREATION, PROMOTION, protection, UTILIZATION, AND ENFORCEMENT** of intellectual property rights in the country. (5.1(g)a)

5.2. The Office shall have custody of all records, books, drawings, specifications, documents, and other papers and things relating to intellectual property rights applications filed with the Office. (n)

5.3. IN THE EXERCISE OF THESE FUNCTIONS, THE OFFICE SHALL HAVE THE AUTHORITY TO:

A) ESTABLISH AND COLLECT FEES AND OTHER CHARGES; AND

1 **B) ESTABLISH RULES AND PROCEDURES INCLUDING**
2 **REASONABLE TIMELINES CONSISTENT WITH**
3 **INTERNATIONAL TREATIES, AGREEMENTS, AND BEST**
4 **PRACTICES, AND COMMENSURATE TO THE EXTREMELY**
5 **COMPLICATED AND EXCEPTIONALLY TECHNICAL FIELD OF**
6 **INTELLECTUAL PROPERTY. THESE RULES OF PROCEDURES,**
7 **WHICH MAY INCLUDE THE GRANT OF PATENTS,**
8 **REGISTRATION OF UTILITY MODELS, INDUSTRIAL DESIGNS,**
9 **LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED**
10 **CIRCUITS, MARKS OF OWNERSHIP, AND THE ADJUDICATION**
11 **OF INTELLECTUAL PROPERTY DISPUTES, SHALL BE**
12 **EXEMPTED FROM ANY LAW THAT PRESCRIBES TIMELINES**
13 **FOR GOVERNMENT TRANSACTIONS. (N)**

14
15 **SECTION 5.** Sec. 6 of the IP Code is hereby amended to read as follows:
16

17 SEC. 6. *The Organizational Structure of the IPO.* - 6.1 The Office shall be
18 headed by a Director General who shall be assisted by **THREE (3)** [two
19 (2)] Deputies Director General.

20 6.2. The Office shall **COMPRISE** [be divided into] seven (7) Bureaus **AND**
21 **AN INTELLECTUAL PROPERTY ACADEMY**, each of which shall be
22 headed by a Director and [assisted by] an Assistant Director, **AND SUCH**
23 **OTHER OFFICES AS MAY BE ESTABLISHED BY THE DIRECTOR**
24 **GENERAL.**[The] **THE SEVEN (7) Bureaus OF THE OFFICE** are **AS**
25 **FOLLOWS:**

- 26 a) The Bureau of Patents;
27 b) The Bureau of Trademarks;
28 c) The Bureau of [Legal Affairs] **COPYRIGHT AND RELATED**
29 **RIGHTS;**
30 d) The [Documentation, Information and Technology Transfer]
31 Bureau **OF LEGAL AFFAIRS**
32 e) The [Management Information System and EDP] Bureau **OF**
33 **INNOVATION AND BUSINESS DEVELOPMENT;**
34 f) The [Administrative, Financial and Personnel Service Bureau]
35 **INFORMATION TECHNOLOGY MANAGEMENT SERVICE;** and
36 g) The [Bureau of Copyright and Other Related Rights] **FINANCIAL**
37 **MANAGEMENT AND ADMINISTRATIVE BUREAU.** (6.2a)

38 6.3. The Director General, Deputies Director General, Directors and
39 Assistant Directors shall be appointed by the President.[and] The other
40 officers and employees of the Office **SHALL BE APPOINTED** by the
41 Secretary of Trade and Industry, conformably with and under the Civil
42 Service Law; **PROVIDED, THAT SUCH POWER MAY BE DELEGATED**
43 **TO THE DIRECTOR GENERAL.**

44
45 **SECTION 6.** Sec. 7 of the IP Code is hereby amended to read as follows:
46

47 SEC. 7. *The **OFFICE OF THE** Director General [and Deputies Director*
48 *General].* -

49 [7.4.]**7.1.** [*The Office of the Director General.*] **COMPOSITION** - The Office
50 of the Director General shall consist of the Director General and the

Deputies Director General, their immediate staff, and such Offices and Services that the Director General will set up to support directly the **PLANS AND PROGRAMS OF THE** Office of the Director General-, **INCLUDING BUT NOT LIMITED TO:**

A) INTELLECTUAL PROPERTY POLICY, ADVOCACY, AND RESEARCH;

B) INTERNATIONAL AFFAIRS;

C) COMMUNICATIONS, PROMOTION, AND MARKETING;

D) STRATEGY AND KNOWLEDGE MANAGEMENT; AND

E) INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.

THE DIRECTOR GENERAL MAY ALSO SET UP REGIONAL, PROVINCIAL, AND SATELLITE OFFICES AS NEEDED.

[7.1.]**7.2. Functions.** - The **OFFICE OF THE** Director General, **THROUGH THE DIRECTOR GENERAL**, shall exercise the following powers and functions:

a) Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: *Provided, That* **THE DIRECTOR GENERAL SHALL BE SUBJECT TO THE SUPERVISION OF THE SECRETARY OF TRADE AND INDUSTRY** in the exercise of the authority to propose policies and standards in relation to the following:

(1) the effective, efficient, and economical operations of the Office requiring statutory enactment;

(2) coordination with other agencies of government in relation to the enforcement of intellectual property rights;

(3) [the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4)] the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design, **LAYOUT-DESIGN (TOPOGRAPHY) OF AN INTEGRATED CIRCUIT**, or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, **EXCEPT THE FEES THAT MAY BE CHARGED BY THE IP ACADEMY; AND**

(4) DESIGNATE INTELLECTUAL PROPERTY ATTACHÉS TO OTHER COUNTRIES OR REPRESENTATIVES TO INTERNATIONAL OR LOCAL AGENCIES, ORGANIZATIONS, AND ENTITIES.

b) **EXERCISE, IN CONTESTED PROCEEDINGS IN THE OFFICE, THE FOLLOWING:**

(1) **EXCLUSIVE ORIGINAL JURISDICTION OVER THE GRANT OF COMPULSORY LICENSES, AS WELL AS SPECIAL COMPULSORY LICENSES INVOLVING PATENTED DRUGS AND MEDICINES.**

THE DECISIONS OF THE OFFICE OF THE DIRECTOR GENERAL UNDER THIS PROVISION SHALL BE APPEALABLE TO THE COURT OF APPEALS IN ACCORDANCE WITH THE RULES OF COURT; (N)

(2) [Exercise] exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of

Patents, the Director of Trademarks, the Director of Copyright and [Other] Related Rights, and the Director of the [Documentation, Information and Technology Transfer] Bureau **OF INNOVATION AND BUSINESS DEVELOPMENT.**

THE DIRECTOR GENERAL MAY FORM DIVISIONS UNDER THE OFFICE OF THE DIRECTOR GENERAL IN THE EXERCISE OF THE APPELLATE FUNCTIONS AND PROMULGATE RULES OF PROCEDURE AND PRACTICE PURSUANT TO THIS PARAGRAPH.

The decisions of the **OFFICE OF THE** Director General in the exercise of [his]**ITS** appellate jurisdiction in respect of the decisions of the **DIRECTOR OF LEGAL AFFAIRS**, Director of Patents, the Director of Trademarks, and the Director of Copyright and [Other] Related Rights shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the [Director of Documentation, Information and Technology Transfer]Bureau **OF INNOVATION AND BUSINESS DEVELOPMENT** shall be appealable to the Secretary of Trade and Industry.

(3) THE POWER TO HOLD IN CONTEMPT ALL THOSE WHO DISREGARD ORDERS OR WRITS ISSUED IN THE COURSE OF THE PROCEEDINGS PROVIDED IN THE PRECEDING TWO SUBSECTIONS; (7.1(b)a)

c) x x x

d) Conduct visits during reasonable hours to establishments and businesses **BASED ON REPORT OR INFORMATION BY THE OWNER(S) OR HOLDER(S) OF THE INTELLECTUAL PROPERTY RIGHTS** received by the office, **OF** [engaging in] activities **SUSPECTED TO BE IN VIOLATION** [violating intellectual property rights and provisions] of this Act; [and]

E) BASED ON A VERIFIED COMPLAINT, REPORT OR INFORMATION RECEIVED BY THE OFFICE, TO COORDINATE WITH THE APPROPRIATE AGENCY, BODY, OR INTERMEDIARY SERVICE PROVIDER, TO UNDERTAKE URGENT MEASURES TO ADDRESS ANY ALLEGED VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, SUCH AS THROUGH BLOCKING ACCESS TO WEBSITES OR TAKING DOWN ALLEGEDLY INFRINGING MATERIALS;

F) [(e)] Such other functions in furtherance of **THE** [protecting IP rights and] objectives of this Act.

[7.2.]**7.3. Qualifications.** – The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least **TWO (2) DEPUTIES** [one (1) Deputy] Director General shall be members of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That **THE THIRD DEPUTY DIRECTOR GENERAL SHALL HAVE AT LEAST A MASTER'S DEGREE IN BUSINESS MANAGEMENT OR OTHER SIMILAR COURSES WITH SEVEN (7) YEARS EXPERIENCE IN MANAGEMENT.**[in] In the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

[7.3.]**7.4.** Term of Office. - The Director General and the Deputies
Director General shall be appointed by the President for a **FULL** term of
five (5) years, **RECKONED FROM THE DATE OF APPOINTMENT**, and
shall be eligible for reappointment only once: [Provided, That the first
Director General shall have a first term of seven (7) years. Appointment
to any vacancy shall be only for the unexpired term of the predecessor.]
(7.3a)

[7.4. The Office of the Director General. - The Office of the Director
General shall consist of the Director General and the Deputies Director
General, their immediate staff and such Offices and Services that the
Director General will set up to support directly the Office of the Director
General.]

SECTION 7. Sec. 8 of the IP Code is hereby amended to read as follows:

SEC. 8. *The Bureau of Patents.* - The Bureau of Patents shall have the
following functions:

8.1. x x x

8.2. x x x

**8.3. ACCEPT AND HOLD IN CUSTODY, IN ACCORDANCE WITH THE
RELEVANT LAWS ON ARCHIVING, ALL THE APPLICATIONS FILED
WITH THE BUREAU, GRANTS OR CERTIFICATES OF REGISTRATION
ISSUED BY IT, AND OTHER SIMILAR DOCUMENTS, AS WELL AS
ISSUE CERTIFIED COPIES OF SUCH DOCUMENTS;**[Conduct studies
and researches in the field of patents in order to assist the Director
General in formulating policies on the administration and examination of
patents. (n)]

**8.4. ESTABLISH AND MAINTAIN REGISTRIES OR DATABASES OF
PATENTS, INDUSTRIAL DESIGNS, UTILITY MODELS, AND LAYOUT-
DESIGNS OF INTEGRATED CIRCUITS;**

**8.5. PUBLISH APPLICATIONS AND GRANTS OF PATENTS; AND
REGISTRATIONS OF INDUSTRIAL DESIGNS, UTILITY MODELS, AND
LAYOUT-DESIGNS OF INTEGRATED CIRCUITS; AND**

**8.6. PERFORM SUCH OTHER FUNCTIONS RELATED TO THE
FOREGOING.**

SECTION 8. Sec. 9 of the IP Code is hereby amended to read as follows:

SEC. 9. *The Bureau of Trademarks.* - The Bureau of Trademarks shall
have the following functions:

9.1. Search and examination of the applications for the registration of
marks, geographical indications and [other marks of ownership] and the
issuance of the certificates of registration; [and] (a)

**9.2. ACCEPT AND HOLD IN CUSTODY, IN ACCORDANCE WITH THE
RELEVANT LAWS ON ARCHIVING, ALL THE APPLICATIONS FILED
WITH THE BUREAU, CERTIFICATES OF REGISTRATION ISSUED BY
IT, AND OTHER SIMILAR DOCUMENTS, AS WELL AS ISSUE
CERTIFIED COPIES OF SUCH DOCUMENTS; (N)** [Conduct studies and
researches in the field of trademarks in order to assist the Director
General in formulating policies on the administration and examination of
trademarks. (n)]

**9.3. ESTABLISH AND MAINTAIN REGISTRIES OR DATABASES OF
TRADEMARKS, WELL-KNOWN MARKS, OTHER MARKS OF
OWNERSHIP, AND GEOGRAPHICAL INDICATIONS; (N)**

1 **9.4. PUBLISH APPLICATIONS AND REGISTRATIONS OF**
2 **TRADEMARKS, OTHER MARKS OF OWNERSHIP, AND**
3 **GEOGRAPHICAL INDICATIONS; AND (N)**

4 **9.5. PERFORM SUCH OTHER FUNCTIONS RELATED TO THE**
5 **FOREGOING. (N)**

6 **SECTION 9.** Section 9A of the IP Code is hereby amended to read as follows:

7 SEC. 9A. *The Bureau of Copyright and [Other] Related Rights.* - The
8 Bureau of Copyright and Other Related Rights shall have the following
9 functions:

10 9A.1. Exercise original jurisdiction to resolve disputes relating to
11 **COPYRIGHT AND RELATED RIGHTS, EXCEPT THOSE FALLING**
12 **WITHIN THE JURISDICTION OF THE BUREAU OF LEGAL**
13 **AFFAIRS**[the terms of a license involving the author's right to public
14 performance or other communication of his work;]

15 9A.2. **ACCEPT, REVIEW AND DECIDE ON APPLICATIONS FOR THE**
16 **ACCREDITATION OF COLLECTIVE MANAGEMENT ORGANIZATIONS**
17 **OR SIMILAR ENTITIES;**

18 9A.3. **FORMULATE AND IMPLEMENT PLANS AND PROJECTS TO**
19 **PROMOTE A CULTURE OF CREATIVITY AND RESPECT FOR**
20 **ARTISTIC CREATION;**[Conduct studies and researches in the field of
21 copyright and related rights; and (n)]

22 9A.4. **ESTABLISH AND MAINTAIN REGISTRIES OR DATABASES**
23 **INVOLVING COPYRIGHT AND RELATED RIGHTS IN COORDINATION**
24 **WITH OTHER GOVERNMENT AGENCIES, ENTITIES, AND PRIVATE**
25 **STAKEHOLDERS;**[Provide other copyright and related rights service and
26 charge reasonable fees therefor; and (n)]

27 **9A.5. PERFORM SUCH OTHER FUNCTIONS AND SERVICES**
28 **RELATED TO THE FOREGOING. (9A.4)**

29 **SECTION 10.** Sec. 10 of the IP Code is hereby amended to read as follows:

30 SEC. 10. *The Bureau of Legal Affairs.* - The Bureau of Legal Affairs shall
31 have the following functions:

32 10.1. Hear and decide opposition to the application for registration of
33 marks; **DECLARATION OF WELL-KNOWN MARKS;** cancellation of
34 trademarks; **REVOCATION OF DECLARATION OF WELL-KNOWN**
35 **MARKS;** subject to the provisions of Section 64, cancellation of patents,
36 utility models, and industrial designs, **AND LAYOUT-DESIGNS OF**
37 **INTEGRATED CIRCUITS; PETITION FOR DECLARATION AS TRUE**
38 **AND ACTUAL INVENTOR; REVOCATION OF DECLARATION AS TRUE**
39 **AND ACTUAL INVENTOR; PETITION FOR DECLARATION OF**
40 **OWNERSHIP OR OF HAVING THE RIGHT TO INTELLECTUAL**
41 **PROPERTY, REVOCATION OF DECLARATION OF OWNERSHIP OR OF**
42 **HAVING THE RIGHT TO INTELLECTUAL PROPERTY;**[and petitions for
43 compulsory licensing of patents;] (10.1a)

44 10.2.

45 (a) Exercise original **AND EXCLUSIVE** jurisdiction in administrative
46 complaints for violations of laws involving intellectual property
47 rights: Provided, [That its jurisdiction is limited to complaints
48 where the total damages claimed are not less than Two hundred
49 thousand pesos (Php 200,000): Provided further,] That availment
50 of the provisional remedies may be granted in accordance with the
51 Rules of Court. The [Director of Legal Affairs]**BUREAU** shall have
52 the power to hold and punish for contempt all those who disregard
53 orders or writs issued in the course of the proceedings. (10.2(a)a)

1 (b) After formal investigation, the [Director for Legal Affairs]**BUREAU**
2 may impose one (1) or more of the following administrative
3 penalties:

4 (i) xxx

5 (ii) The acceptance of a voluntary assurance of compliance or
6 discontinuance as may be imposed. Such voluntary
7 assurance may include one or more of the following:

8 (1) xxx

9 (2) xxx

10 (3) xxx

11 (4) xxx

12 The [Director of Legal Affairs]**BUREAU** may also require the
13 respondent to submit periodic compliance reports and file a
14 bond to guarantee compliance of his undertaking;

15 (iii) The condemnation or seizure of products which are subject
16 of the offense. The goods seized hereunder shall be
17 disposed of in such manner as may be deemed appropriate
18 by the [Director of Legal Affairs]**BUREAU**, such as by sale,
19 donation to distressed local governments or to charitable or
20 relief institutions, exportation, recycling into other goods, or
21 any combination thereof, under such guidelines as **THE**
22 **BUREAU** [he] may provide;

23 (iv) xxx

24 (v) The imposition of administrative fines in such amount as
25 deemed reasonable by the Director of Legal Affairs, which
26 shall in no case be less than Five thousand pesos (Php
27 5,000) nor more than **FIVE** [One] hundred [fifty] thousand
28 pesos (Php **500,000**[150,000]). In addition, an additional
29 fine of not [more]**LESS** than One thousand pesos (Php
30 1,000) shall be imposed for each day of continuing
31 violation;

32 (vi) The cancellation of any [permit,] license, authority, or
33 registration which may have been granted by the Office, or
34 the suspension of the validity thereof for such period of
35 time as the [Director of Legal Affairs]**BUREAU** may deem
36 reasonable which shall not exceed one (1) year;

37 (vii) The withholding of any [permit,] license, authority, or
38 registration which is being secured by the respondent from
39 the Office;

40 (viii) The assessment **AND AWARD** of damages, **INCLUDING**
41 **SUCH PROFITS THE INFRINGER MAY HAVE MADE DUE**
42 **TO SUCH INFRINGEMENT, ATTORNEY'S FEES, AND**
43 **COSTS OF LITIGATION;**

44 (ix) Censure; and

45 (x) Other analogous penalties or sanctions. (10.2(b)a)

46 **10.3. SETTLE DISPUTES INVOLVING TECHNOLOGY TRANSFER**
47 **PAYMENTS; (11.8A)**

48 **10.4. ADMINISTER AN ALTERNATIVE DISPUTE RESOLUTION**
49 **MECHANISM; AND (N)**

1 **10.5. PROVIDE ASSISTANCE TO OTHER BUREAUS AND OFFICES OF**
2 **THE IPO, INCLUDING LEGAL REVIEW, STUDY, AND SIMILAR TASKS.**
3 **(N)**

4 [10.3.]**10.6.** The Director General may by Regulations establish the
5 procedure to govern the implementation of this Section, **PROVIDED,**
6 **THAT, IN ALL PROCEEDINGS BEFORE THE BUREAU, THE**
7 **EQUITABLE PRINCIPLES OF LACHES, ESTOPPEL AND**
8 **ACQUIESCENCE, WHERE APPLICABLE, MAY BE CONSIDERED AND**
9 **APPLIED.** (10.3a, 231)

10
11 **SECTION 11.** Sec. 11 of the IP Code is hereby amended to read as follows:

12
13 **SEC. 11.***[The Documentation, Information and Technology Transfer]*
14 **Bureau OF INNOVATION AND BUSINESS DEVELOPMENT.** - The
15 *[Documentation, Information and Technology Transfer]* Bureau of
16 **INNOVATION AND BUSINESS DEVELOPMENT** shall have the following
17 functions:

18 **11.1. FOSTER INNOVATION AND BUSINESS DEVELOPMENT**
19 **THROUGH:** [Support the search and examination activities of the Office
20 through the following activities:]

- 21 (a) **PROMOTING THE USE OF PATENT INFORMATION AS A**
22 **STRATEGIC TOOL TO FACILITATE THE DEVELOPMENT OF**
23 **TECHNOLOGY IN THE COUNTRY;** [Maintain and upkeep
24 classification systems whether they be national or international
25 such as the International Patent Classification (IPC) system;]
26 (5.1(d)a)
- 27 (b) **PERFORMING PATENT SEARCH, ANALYTICS, MAPPING, AND**
28 **SIMILAR ACTIVITIES;**[Provide advisory services for the
29 determination of search patterns;] (n)
- 30 (c) **REGISTERING TECHNOLOGY TRANSFER ARRANGEMENTS;**
31 [Maintain search files and search rooms and reference libraries;
32 and] (n)
- 33 (d) **MAINTAINING REGISTRIES OF SECURITY AGREEMENTS, AS**
34 **WELL AS ASSIGNMENTS, LICENSES, AND OTHER**
35 **INSTRUMENTS RELATING TO THE TRANSMISSION OF ANY**
36 **INCHOATE OR VESTED RIGHT, TITLE, OR INTEREST IN AND**
37 **TO INTELLECTUAL PROPERTY RIGHTS MENTIONED IN SEC.**
38 **4.2.** (n) [Adapt and package industrial property information.]
- 39 (e) **DEVELOPING PROGRAMS TO PROMOTE CREATIVITY,**
40 **INNOVATION, AND UTILIZATION OF INTELLECTUAL**
41 **PROPERTY;**
- 42 (f) **PROVIDING TRAINING AND SERVICES RELATED TO THE**
43 **FOREGOING; AND** (n)

44 **11.2.** Establish networks **WITH** [or]**INNOVATORS AND INNOVATING**
45 **CENTERS**[intermediaries or regional representatives.] (11.2a)

46 [11.3. Educate the public and build awareness on intellectual property
47 through the conduct of seminars and lectures, and other similar
48 activities;]

49 [11.4. Establish working relations with research and development
50 institutions as well as with local and international intellectual property
51 professional groups and the like;]

52 [11.5. Perform state-of-the-art searches;]

1 [11.6. Promote the use of patent information as an effective tool to
2 facilitate the development of technology in the country;]

3 [11.7. Provide technical, advisory, and other services relating to the
4 licensing and promotion of technology, and carry out an efficient and
5 effective program for technology transfer; and]

6 [11.8. Register technology transfer arrangements, and settle disputes
7 involving technology transfer payments. (n)]

8
9 **SECTION 12.** A new Sec. 11A is hereby inserted after Sec. 11 of the IP Code, to
10 read as follows:

11
12 **SEC. 11A. INTELLECTUAL PROPERTY ACADEMY (IP ACADEMY). -**

13 **11A.1. AN ACADEMY FOR INTELLECTUAL PROPERTY SHALL SERVE AS**
14 **THE COUNTRY'S CENTER OF TRAINING AND RESEARCH ON**
15 **INTELLECTUAL PROPERTY. FOR THIS PURPOSE, THE IP ACADEMY**
16 **SHALL:**

17 **A) ADOPT AND IMPLEMENT CAPACITY BUILDING PROGRAMS AND**
18 **ACTIVITIES TO BUILD AWARENESS AND RESPECT FOR**
19 **INTELLECTUAL PROPERTY;**

20 **B) PREPARE MODULES AND COURSES, CONDUCT LECTURES ON**
21 **INTELLECTUAL PROPERTY AND SUBJECT MATTER RELATED TO**
22 **INTELLECTUAL PROPERTY, AND GRANT THE CORRESPONDING**
23 **CERTIFICATES AND DIPLOMAS;**

24 **C) ADMINISTER PROGRAMS ON THE RECOGNITION OF ATTORNEYS,**
25 **AGENTS, OR OTHER PERSONS REPRESENTING APPLICANTS OR**
26 **OTHER PARTIES BEFORE THE OFFICE;**

27 **D) ESTABLISH PARTNERSHIPS AND COOPERATION ARRANGEMENTS**
28 **WITH OTHER LOCAL OR FOREIGN AGENCIES, EDUCATIONAL**
29 **INSTITUTIONS, AND ORGANIZATIONS TO PROMOTE**
30 **INTELLECTUAL PROPERTY EDUCATION IN THE COUNTRY;**

31 **E) ACCEPT DONATIONS FROM ANY LEGAL OR LEGITIMATE SOURCE,**
32 **FOREIGN OR LOCAL, FOR USE IN ANY OF ITS PROGRAMS,**
33 **PROJECTS AND ACTIVITIES; AND**

34 **F) ESTABLISH A ROSTER OF FACULTY AND LECTURERS, AND**
35 **ENGAGE THE SERVICES OF CURRENT EMPLOYEES OF THE**
36 **OFFICE, AND OTHER RESOURCE PERSONS AND EXPERTS IN THE**
37 **FIELD.**

38 **11A.2. THE DIRECTOR GENERAL SHALL APPROVE THE:**

39 **A) FEES CHARGED BY THE ACADEMY;**

40 **B) THE POOL OF LECTURERS AND THEIR REMUNERATION; AND**

41 **C) THE HONORARIA THAT MAY BE PAID TO EMPLOYEES OF THE**
42 **OFFICE.**

43
44 **SECTION 13.** Sec. 12 of the IP Code is hereby amended to read as follows:

45
46 SEC. 12. The **INFORMATION TECHNOLOGY** Management [Information]
47 Service. - The **INFORMATION TECHNOLOGY** Management [Information]
48 Service shall:

12.1. **PLAN, DEVELOP, AND IMPLEMENT INFORMATION TECHNOLOGY (IT) STRATEGIES AND POLICIES IN COLLABORATION WITH ALL OFFICES AND BUREAUS TO ENSURE THE OPTIMAL APPLICATION AND UTILIZATION OF IT RESOURCES AND SERVICES; AND** [Conduct testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation, and the like; and]

12.2. **DEVELOP AND MAINTAIN DATABASES, APPLICATION SYSTEMS, AND NETWORK INFRASTRUCTURE SYSTEMS TO SUPPORT ALL OFFICE AND BUREAU OPERATIONS.** [Provide management information support and service to the Office.]

SECTION 14. Sec. 13 of the IP Code is hereby amended to read as follows:

SEC. 13. *The* **FINANCIAL MANAGEMENT AND ADMINISTRATIVE** [Administrative, Financial and Human Resource Development Service] Bureau. - **THE FINANCIAL MANAGEMENT AND ADMINISTRATIVE BUREAU SHALL COMPRISE THREE (3) DIVISIONS, NAMELY: THE ADMINISTRATIVE DIVISION, THE FINANCIAL MANAGEMENT DIVISION, AND THE HUMAN RESOURCE DEVELOPMENT DIVISION.**

13.1. The Administrative **DIVISION** [Service] shall:

- (a) Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other [Office's] obligations **OF THE OFFICE**, [office] maintenance, ~~AND~~ proper safety and security of the Office, **AS WELL AS** [and] other utility services; [and]
- (b) Comply with government regulatory requirements in the areas of performance appraisal, compensation and benefits, employment records and reports; and
- (c) [(b)] Receive all applications filed with the Office and collect fees therefore; [and (c) Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and lay-out-designs of integrated circuits registrations.]

[13.2. The Patent and Trademark Administration Services shall perform the following functions among others:]

[(a) Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;]

[(b) Collect maintenance fees, issue certified copies of documents in its custody and perform similar other activities; and]

[(c) Hold in custody all the applications filed with the office, and all patent grants, certificate of registrations issued by the office, and the like.]

[13.3.] **13.2.** The Financial **MANAGEMENT DIVISION** [Service] shall formulate and manage a financial program to ensure availability and proper utilization of funds; provide for an effective monitoring system of the financial operations of the Office; and (13.3a)

[13.4.] **13.3.** The Human Resource Development **DIVISION** [Service] shall design and implement human resource development plans and programs for the personnel of the Office; provide for present and future manpower needs of the organization; maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs. (13.4a)

SECTION 15. A new Section 13A is hereby inserted after Section 13 of the IP Code, to read as follows:

SEC. 13A. THE NATIONAL COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS (NCIPR). - THERE SHALL BE CREATED A NATIONAL COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS UNDER THIS ACT.

13A.1. COMPOSITION. - THE COMMITTEE SHALL BE COMPOSED OF THE INTELLECTUAL PROPERTY OFFICE AS CHAIR WITH THE FOLLOWING MEMBERS:

- A) DEPARTMENT OF TRADE AND INDUSTRY;
- B) DEPARTMENT OF JUSTICE;
- C) DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT;
- D) BUREAU OF CUSTOMS;
- E) NATIONAL TELECOMMUNICATIONS COMMISSION;
- F) OPTICAL MEDIA BOARD;
- G) NATIONAL BUREAU OF INVESTIGATION;
- H) PHILIPPINE NATIONAL POLICE;
- I) FOOD AND DRUG ADMINISTRATION;
- J) NATIONAL BOOK DEVELOPMENT BOARD;
- K) OFFICE OF THE SPECIAL ENVOY FOR TRANSNATIONAL CRIMES; AND
- L) SUCH OTHER AGENCIES AS MAY BE CALLED UPON BY THE COMMITTEE. (N)

13A.2. FUNCTIONS. - THE NCIPR SHALL ACT AS THE COORDINATING BODY ON EFFORTS AGAINST INTELLECTUAL PROPERTY RIGHTS VIOLATIONS AND SHALL HAVE THE FOLLOWING FUNCTIONS:

- A) FORMULATE STRATEGIC PLANS AND PROGRAMS;
- B) ASSIST IN THE PUBLIC INFORMATION AND EDUCATION CAMPAIGN ON THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS;
- C) FACILITATE AND ASSIST IN THE EFFECTIVE ENFORCEMENT AND PROSECUTION OF VIOLATORS OF INTELLECTUAL PROPERTY RIGHTS;
- D) RECOMMEND MEASURES TO THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL DEPARTMENTS TO ENSURE TIMELY AND EFFECTIVE ENFORCEMENT AND ADJUDICATION OF INTELLECTUAL PROPERTY RIGHTS CASES;
- E) MAINTAIN A DATABASE AND ENFORCEMENT MONITORING SYSTEM, CONSOLIDATED INFORMATION AND REPORTS FROM OTHER AGENCIES, AND SUBMIT PERIODIC REPORTS;
- F) COORDINATE WITH OTHER GOVERNMENT AGENCIES AND THE PRIVATE SECTOR EFFORTS ON MATTERS RELATED TO IPR ENFORCEMENT. (N)

13A.3. TO PERFORM THE FUNCTIONS IN THE IMMEDIATELY PRECEDING SUBSECTION, EACH OF THE NCIPR MEMBER-AGENCIES SHALL ESTABLISH AND MAINTAIN A PERMANENT INTELLECTUAL PROPERTY UNIT WITH REGULAR AND ADEQUATE RESOURCES, PERSONNEL, AND BUDGETARY SUPPORT ALLOCATED FROM THEIR OWN FUNDS. (N)

13A.4. THE IPO SHALL PROVIDE SECRETARIAT SERVICES TO THE COMMITTEE. (N)

SECTION 16. Sec. 14 of the IP Code is hereby amended to read as follows:

SEC. 14. *Use of Intellectual Property Rights Fees by the IPO.* - 14.1. For a more effective and expeditious implementation of this Act, the Director General shall be authorized to retain, without need of a separate approval from any government agency, and subject only to the existing accounting and auditing rules and regulations, all the fees, fines, royalties and other charges, collected by the Office, **INCLUDING INTEREST INCOME**, under this Act and the other laws that the Office will be mandated to administer. **SUCH AMOUNTS AND INTEREST MAY BE USED**[, for use in its] to **PERFORM ITS MANDATE, TO IMPROVE THE DELIVERY OF ITS SERVICES TO THE PUBLIC, OR TO SUPPORT ITS PROGRAMS** and operations, **SUCH AS**[like upgrading of its facilities, equipment outlay,]**HUMAN RESOURCE DEVELOPMENT AND CAPITAL OUTLAY**, [human resource development, and]**INCLUDING** the acquisition of **EQUIPMENT, LAND AND/OR CONSTRUCTION** of the appropriate office spaces **S AND FACILITIES, AND ANY IMPROVEMENTS THEREON**. [among others, to improve the delivery of its services to the public.] This amount, [which shall be in addition to the Office's annual budget,] shall be deposited and maintained in a **N** [separate] account or fund, which may be used or disbursed directly by the Director General.

14.2. xxx

SECTION 17. Sec. 19 of the IP Code is hereby amended to read as follows:

SEC. 19. *Disqualification of Officers and Employees of the Office.* - All officers and employees of the Office shall not apply or act as an attorney or patent agent of an application for a grant of patent, for the registration of a utility model, industrial design, **LAYOUT-DESIGN OF AN INTEGRATED CIRCUIT**, ~~or~~ mark, **OR GEOGRAPHICAL INDICATION** nor acquire, except by hereditary succession, any patent or utility model, design registration, or mark or any right, title or interest therein during their employment and for one (1) year thereafter.

SECTION 18. The title of Part II of the IP Code is hereby amended to read as follows:

PART II

[THE LAW ON] PATENTS, **UTILITY MODELS, INDUSTRIAL DESIGNS, AND LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

SECTION 19. Section 20 of the IP Code is hereby amended to read as follows:

SEC. 20.*Definition of Terms [Used in Part II, The Law on Patents].* – As used in Part II, the following terms shall have the following meanings:

20.1. "Bureau" means the Bureau of Patents;

20.2. "Director" means the Director of Patents;

20.3. "Regulations" means the Rules of Practice in Patent, **UTILITY MODEL, AND INDUSTRIAL DESIGN Cases OR THE LAYOUT-DESIGNS (TOPOGRAPHIES) REGULATIONS** formulated by the Director of Patents and promulgated by the Director General, **WHICHEVER IS APPLICABLE, AS THE CASE MAY BE;** (a)

20.4. "Examiner" means the patent examiner;

20.5. "Patent application" or "application" means an application for a patent for an invention except in Chapters **X**[XII] and **XI**[XIII], where application means an application for a utility model and an industrial design or **TOPOGRAPHY OF INTEGRATED CIRCUIT**, respectively; and (a)

20.6. "Priority date" means the date of filing of the foreign application for the same invention referred to in Section 31 of this Act. (n)

SECTION 20. Section 46.2 of the IP Code is hereby amended to read as follows:

46.2. Received written notice that the invention that he was using was the subject matter of a published application being identified in the said notice by its serial number: Provided, That the action may not be filed until after the grant of a patent on the published application. [and within four (4) years from the commission of the acts complained of.]

SECTION 21. Section 50.3 of the IP Code is hereby deleted.

[50.3. A patent shall take effect on the date of the publication of the grant of the patent in the IPO Gazette. (Sec. 18, R.A. No. 165a).]

SECTION 22. Section 67 of the IP Code is hereby amended to read, as follows:

SEC. 67.REMEDY OF THE TRUE AND ACTUAL INVENTOR OR A PERSON HAVING THE RIGHT TO A PATENT. - A PERSON WHO WAS DEPRIVED OF THE PATENT OR THE RIGHT TO FILE A PATENT APPLICATION, WITH OR WITHOUT FRAUD, MAY FILE AN ACTION WITH THE COURT OR WITH THE BUREAU OF LEGAL AFFAIRS FOR A DECLARATION AS THE TRUE AND ACTUAL INVENTOR, OR AS A PERSON HAVING THE RIGHT TO A PATENT OR TO FILE A PATENT APPLICATION. (n)

[SEC. 67. Patent Application by Persons Not Having the Right to a Patent. - 67.1. If a person referred to in Section 29 other than the applicant, is declared by final court order or decision as having the right to the patent, such person may, within three (3) months after the decision has become final:]

[(a) Prosecute the application as his own application in place of the applicant;]

[(b) File a new patent application in respect of the same invention;]

[(c) Request that the application be refused; or]

[(d) Seek cancellation of the patent, if one has already been issued.]

[67.2. The provisions of Subsection 38.2 shall apply mutatis mutandis to a new application filed under Subsection 67.1(b). (n)]

SECTION 23. Sec. 68 of the IP Code is hereby amended to read as follows:

SEC. 68. EFFECT OF DECLARATION AS THE TRUE AND ACTUAL INVENTOR OR A PERSON HAVING THE RIGHT TO A PATENT. - A PERSON DECLARED BY FINAL ORDER OR DECISION OF THE COURT OR BY THE BUREAU OF LEGAL AFFAIRS TO BE THE TRUE AND ACTUAL INVENTOR OR TO HAVE THE RIGHT TO THE PATENT OR TO FILE A PATENT APPLICATION MAY, WITHIN THREE (3)

MONTHS AFTER THE DECISION HAS BECOME FINAL AND EXECUTORY, NOTIFY THE BUREAU OF PATENTS OF ANY OR MORE APPLICABLE OPTIONS, NAMELY:

- (A) PROSECUTE THE APPLICATION AS HIS OWN IN PLACE OF THE APPLICANT;
- (B) FILE A NEW PATENT APPLICATION IN RESPECT OF THE SAME INVENTION; PROVIDED, THAT THE FILING OR PRIORITY DATE OF THE OLD APPLICATION IS RETAINED;
- (C) REQUEST THAT THE APPLICATION BE REFUSED; OR
- (D) SEEK CANCELLATION OF THE PATENT, IF ONE HAS ALREADY BEEN ISSUED.

IN CASE OF FRAUD, THE COURT OR BUREAU OF LEGAL AFFAIRS MAY AWARD ACTUAL AND OTHER DAMAGES IN FAVOR OF THE TRUE AND ACTUAL INVENTOR OR PERSON HAVING THE RIGHT TO A PATENT, IF WARRANTED BY THE CIRCUMSTANCES. (67a, 68a)

[SEC. 68. Remedies of the True and Actual Inventor. - If a person, who was deprived of the patent without his consent or through fraud is declared by final court order or decision to be the true and actual inventor, the court shall order for his substitution as patentee, or at the option of the true inventor, cancel the patent, and award actual and other damages in his favor if warranted by the circumstances. (Sec. 33, R.A. No. 165a)]

SECTION 24. Sec. 69 of the IP Code is hereby amended to read as follows:

SEC. 69. *Publication of the Court Order.* - The court shall furnish the Office a copy of the order or decision referred to in Section[s 67 and] 68, which shall be published in the IPO Gazette within three (3) months from the date such order or decision became final and executory, and shall be recorded in the register of the Office. (a)

SECTION 25. Sec. 70 of the IP Code is hereby amended to read as follows:

SEC. 70. *Time to File Action [in Court].* - The actions indicated in Sections 67 and 68 **MAY** [shall] be filed **AT ANY TIME BUT NOT LATER THAN** [within] one (1) year from the **GRANT OF PATENT**. [the date of publication made in accordance with Sections 44 and 51, respectively.] (a)

SECTION 26. Secs. 71 to 75 of the IP Code are hereby collectively designated under Part II, Chapter VIII, under the following amended heading:

Chapter VIII
RIGHTS OF PATENTEES [AND INFRINGEMENT OF PATENTS]

SECTION 27. Sec. 71 of the IP Code is hereby amended to read as follows:

SEC. 71. *Rights Conferred by Patent.* - 71.1. A patent shall confer on its owner the following exclusive rights:

- (a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- (b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. **RIGHTS TO ASSIGNMENT OR TRANSFER.** - Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same. (Sec. 37, R.A. No. 165a)

[SEC. 107.]**71.3. RIGHTS OF JOINT OWNERS.** - IF TWO (2) OR MORE PERSONS JOINTLY OWN A PATENT AND THE INVENTION COVERED THEREBY, EITHER BY THE ISSUANCE OF THE PATENT IN THEIR JOINT FAVOR OR BY REASON OF THE ASSIGNMENT OF AN UNDIVIDED SHARE IN THE PATENT AND INVENTION OR BY REASON OF THE SUCCESSION IN TITLE TO SUCH SHARE, EACH OF THE JOINT OWNERS SHALL BE ENTITLED TO PERSONALLY MAKE, USE, SELL, OR IMPORT THE INVENTION FOR HIS OWN PROFIT: PROVIDED, HOWEVER, THAT NEITHER OF THE JOINT OWNERS SHALL BE ENTITLED TO GRANT LICENSES OR TO ASSIGN HIS RIGHT, TITLE OR INTEREST OR PART THEREOF WITHOUT THE CONSENT OF THE OTHER OWNER OR OWNERS, OR WITHOUT PROPORTIONALLY DIVIDING THE PROCEEDS WITH SUCH OTHER OWNER OR OWNERS. (107) (Sec. 54, R.A. No. 165)

SECTION 28. Sec. 72.1 of the IP Code is hereby amended to read as follows:

72.1. Using any patented product which has been put on the market in the Philippines **OR ANYWHERE ELSE IN THE WORLD** by the owner of the product, [or] with [his]**THE OWNER'S** express consent, **OR BY ANY PARTY AUTHORIZED TO USE THE INVENTION** insofar as such use is performed after that product has been so put on the said market: Provided, That with regard to drugs and medicines, the [limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the] right to import them **M** [drugs and medicines contemplated in this section shall be available to any government agency or any private third party;

SECTION 29. Secs. 76 to 83 of the IP Code are hereby collectively designated as Part II, Chapter IX, Infringement of Patent Rights, as follows:

Chapter IX
INFRINGEMENT OF PATENT RIGHTS

SECTION 30. Sec. 76 of the IP Code is hereby amended to read, as follows:

SEC. 76.[Civil Action for]—**PATENT** Infringement. - 76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement. Provided, That, this shall not apply to instances covered by Sections 72.1 and 72.4 (Limitations of Patent Rights); Section 74 (Use of Invention by Government); Section [93.6]**110.6** (Compulsory Licensing); and Section [93-A]**120** (Procedures on Issuance of a Special Compulsory License under the TRIPS Agreement) of this Code. (a)

ANYONE WHO ACTIVELY INDUCES THE INFRINGEMENT OF A PATENT OR PROVIDES THE INFRINGER WITH A COMPONENT OF A PATENTED PRODUCT OR OF A PRODUCT PRODUCED FROM A PATENTED PROCESS KNOWING IT TO BE ESPECIALLY ADOPTED FOR INFRINGING THE PATENTED INVENTION AND NOT SUITABLE FOR SUBSTANTIAL NON-INFRINGEMENT USE SHALL BE LIABLE AS A CONTRIBUTORY INFRINGER AND WILL BE JOINTLY AND SEVERALLY LIABLE WITH THE INFRINGER. (76.6)

76.2. **REMEDIES.** -

- 1 A) Any patentee, or anyone possessing any right, title or interest in
2 and to the patented invention, whose rights have been infringed,
3 may bring a civil action before a court of competent jurisdiction, to
4 recover from the infringer such damages sustained thereby, plus
5 attorney's fees and other expenses of litigation, and to secure an
6 injunction for the protection of his rights. (76.2)
7 B) [76.3.] If the damages are inadequate or cannot be readily
8 ascertained with reasonable certainty, the court may award by
9 way of damages a sum equivalent to reasonable royalty. (76.3)
10 C) [76.4.] The court may, according to the circumstances of the case,
11 award damages in a sum above the amount found as actual
12 damages sustained: Provided, That the award does not exceed
13 three (3) times the amount of such actual damages; and (76.4)
14 D) [76.5.] The court may, in its discretion, order that the infringing
15 goods, materials and implements predominantly used in the
16 infringement be disposed of outside the channels of commerce or
17 destroyed, without compensation; (76.5) [and] (Sec. 42, R.A. No.
18 165a)

19 [76.6. Anyone who actively induces the infringement of a patent or
20 provides the infringer with a component of a patented product or of a
21 product produced because of a patented process knowing it to be
22 especially adopted for infringing the patented invention and not suitable
23 for substantial non-infringing use shall be liable as a contributory
24 infringer and shall be jointly and severally liable with the infringer.]

25 **SECTION 31.** Sections 77, 79, 80, 81, and 84 of the IP Code are hereby removed
26 from Part II and are consolidated with other provisions, or later restored with
27 modifications in a new Part VI below, and the remaining provisions of this Chapter are
28 accordingly renumbered, as follows:

29 [[SEC. 77. *Infringement Action by a Foreign National.* - Any foreign
30 national or juridical entity who meets the requirements of Section 3 and
31 not engaged in business in the Philippines, to which a patent has been
32 granted or assigned under this Act, may bring an action for infringement
33 of patent, whether or not it is licensed to do business in the Philippines
34 under existing law. (Sec. 41-A, R.A. No. 165a)]

35 SEC. [78.]**77. *Process Patents; Burden of Proof.*** - If the subject matter of a
36 patent is a process for obtaining a product, any identical product shall be
37 presumed to have been obtained through the use of the patented process
38 if the product is new or there is substantial likelihood that the identical
39 product was made by the process and the owner of the patent has been
40 unable despite reasonable efforts, to determine the process actually
41 used. In ordering the defendant to prove that the process to obtain the
42 identical product is different from the patented process, the court shall
43 adopt measures to protect, as far as practicable, his manufacturing and
44 business secrets. (n)

45 [SEC. 79. *Limitation of Action for Damages.* - No damages can be
46 recovered for acts of infringement committed more than four (4) years
47 before the institution of the action for infringement. (Sec. 43, R.A. No.
48 165)]

49 [SEC. 80. *Damages; Requirement of Notice.* - Damages cannot be
50 recovered for acts of infringement committed before the infringer had
51 known, or had reasonable grounds to know of the patent. It is presumed
52 that the infringer had known of the patent if on the patented product, or
53 on the container or package in which the article is supplied to the public,
54 or on the advertising material relating to the patented product or
55 process, are placed the words "Philippine Patent" with the number of the
56 patent. (Sec. 44, R.A. No. 165a)]

57 [SEC. 81. *Defenses in Action for Infringement.* - In an action for
58 infringement, the defendant, in addition to other defenses available to

him, may show the invalidity of the patent, or any claim thereof, on any of the grounds on which a petition of cancellation can be brought under Section 61 hereof. (Sec. 45, R.A. No. 165)]

SEC. [82.] **78. Patent Found Invalid May be Cancelled.** - In an action for infringement, if the court shall find the patent or any claim to be invalid, it shall cancel the same, and the Director of Legal Affairs upon receipt of the final judgment of cancellation by the court, shall record that fact in the register of the Office and shall publish a notice to that effect in the IPO Gazette. (Sec. 46, R.A. No. 165a)

SEC. [83.] **79. Assessor in Infringement Action.** - [83.1.] **79.1.** Two (2) or more assessors may be appointed by the court. The assessors shall be possessed of the necessary scientific and technical knowledge required by the subject matter in litigation. Either party may challenge the fitness of any assessor proposed for appointment.

[83.2.] **79.2** Each assessor shall receive a compensation in an amount to be fixed by the court and advanced by the complaining party, which shall be awarded as part of his costs should he prevail in the action. [(Sec. 47, R.A. No. 165a)]

[SEC. 84. *Criminal Action for Repetition of Infringement.* - If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (PhP 100,000) but not more than Three hundred thousand pesos (PhP 300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three (3) years from date of the commission of the crime. (Sec. 48, R.A. No. 165a) (84)]

SECTION 32. The entire Chapters IX and X respectively on Voluntary Licensing and Compulsory Licensing are transferred from Part II of this Act and to a new Part III as provided for below.

SECTION 33. Part II, Chapter XI, Assignment and Transmission of Rights becomes the new Part II, Chapter X, Assignment and Transmission of Patent Rights and the Sections therein are accordingly renumbered, as follows, except Section 107 which is transferred to become Sec. 71.3 of the IP Code:

Chapter **X**[XI]

ASSIGNMENT AND TRANSMISSION OF **PATENT** RIGHTS

SEC. [103.] **80. Transmission of Rights.** - [105.1.] **80.1.** Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code. (103.1)

[103.2.] **80.2.** Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract. (103.2) (Sec. 50, R.A. No. 165a)

SEC. [104.] **81. Assignment of Inventions.** -

81.1. SCOPE OF ASSIGNMENT. - An assignment may be of the entire right, title or interest in and to the patent and the invention covered thereby, or of an undivided share of the entire patent and invention, in which event the parties become joint owners thereof. An assignment may be limited to a specified territory. (104) (Sec. 51, R.A. No. 165)

[SEC. 105.] **81.2. Form of Assignment.** - The assignment must be in writing, acknowledged before a notary public or other officer authorized

to administer oath or perform notarial acts, and certified under the hand and official seal of the notary or such other officer. (105) (Sec. 52, R.A. No. 165)

SEC. [106.] **82. Recording.** - 106.1. The Office shall record **SECURITY AGREEMENTS**, assignments, licenses and other instruments relating to the transmission of any right, title or interest in and to inventions, and patents or application for patents or inventions to which they relate, which are presented in due form to the Office for registration, in books and records kept for the purpose. The original documents together with a signed duplicate thereof shall be filed, and the contents thereof should be kept confidential. If the original is not available, an authenticated copy thereof in duplicate may be filed. Upon recording, the Office shall retain the duplicate, return the original or the authenticated copy to the party who filed the same and notice of the recording shall be published in the IPO Gazette.

106.2. Such instruments shall be void as against any subsequent purchaser or mortgagee for valuable consideration and without notice, unless, it is so recorded in the Office, within three (3) months from the date of said instrument, or prior to the subsequent purchase or mortgage. (Sec. 53, R.A. No. 165a)

[SEC. 107. *Rights of Joint Owners.* - If two (2) or more persons jointly own a patent and the invention covered thereby, either by the issuance of the patent in their joint favor or by reason of the assignment of an undivided share in the patent and invention or by reason of the succession in title to such share, each of the joint owners shall be entitled to personally make, use, sell, or import the invention for his own profit: Provided, however, That neither of the joint owners shall be entitled to grant licenses or to assign his right, title or interest or part thereof without the consent of the other owner or owners, or without proportionally dividing the proceeds with such other owner or owners. (Sec. 54, R.A. No. 165)]

SECTION 34. Chapter XII of Part II of the IP Code Registration of Utility Models becomes the new Chapter XI of the same, and the Sections therein are accordingly amended and/or renumbered, as follows:

Chapter **XI**[XII].

REGISTRATION OF UTILITY MODELS

SEC. [108]**83. Applicability of Provisions Relating to Patents.** - [108.1.]**83.1.** Subject to Section **84** [109], the provisions governing patents shall apply, mutatis mutandis, to the registration of utility models. (108)

[108.2.]**83.2.** Where the right to a patent conflicts with the right to a utility model registration in the case referred to in Section 29, the said provision shall apply as if the word "patent" were replaced by the words "patent or utility model registration." (108.2) (Sec. 55, R.A. No. 165a)

SEC. [109.]**84. Special Provisions Relating to Utility Models.** - [109.1]**84.1.**

(a) invention qualifies for registration as a utility model if it is new and industrially applicable.

(b) Section 21, "Patentable Inventions", shall apply except the reference to inventive step as a condition of protection. (109.1)

[109.2.]**84.2.** Sections 43 to 49 shall not apply in the case of applications for registration of a utility model;**PROVIDED, THAT APPLICATIONS**

FOR REGISTRATION SHALL BE PUBLISHED. THIRD PARTIES MAY
FILE WITH THE DIRECTOR OF PATENTS ADVERSE INFORMATION
CITING GROUNDS OR INFORMATION THAT THE UTILITY MODEL IS
NOT NEW OR REGISTRABLE. (109.2)

[109.3.]**84.3.** A utility model registration shall expire x x x

[109.4.]**84.4.** In proceedings under Sections 61 to 64, the utility model
registration shall be cancelled on the following grounds:

- (a) That the claimed invention does not qualify for registration as a
utility model and does not meet the requirements of registrability,
in particular having regard to Subsection **84.1**[109.1] and
Sections 22, 23, 24 and 27;
- (b) That the description and the claims do not comply with the
prescribed requirements;
- (c) That any drawing which is necessary for the understanding of the
invention has not been furnished
- (d) That the owner of the utility model registration is not the inventor
or his successor in title. (109.4a)(Secs. 55, 56, and 57, R.A. No.
165a)

SEC. [110.]**85.***Conversion of Patent Applications or Applications for Utility
Model Registration.* – [110.1.]**85.1.** At any time before the grant [or
refusal] of a patent, an applicant [for a patent] may, upon 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 initial
application. An application may be converted only once. (110.1)

[110.2.]**85.2.** At any time before the grant or refusal of a utility model
registration, an applicant for a utility model registration may, upon
payment of the prescribed fee, convert his application into a patent
application, which shall be accorded the filing date of the initial
application. (110.2) (Sec. 58, R.A. No. 165a)

SEC. [111.] **86.***[Prohibition against] Filing of Parallel Applications.* - An
applicant may not file two (2) applications for the same subject, one for
REGISTRATION OF utility model [registration] and the other for the
grant of **an INVENTION** patent whether simultaneously or consecutively,
WITHIN ONE YEAR FROM THE FILING OF THE FIRST APPLICATION.
THE PROCESSING OF THE APPLICATIONS SHALL PROCEED
INDEPENDENTLY; PROVIDED THAT, ONCE THE PATENT IS
GRANTED TO THE INVENTION APPLICATION, THE UTILITY MODEL
REGISTRATION SHALL BE AUTOMATICALLY CANCELLED AND THE
LETTERS PATENT SHALL BE ISSUED. (111a) (Sec. 59, R.A. No. 165a)

SECTION 35. Chapter XIII of Part II of the IP Code on Industrial Designs and
Layout-Designs (Topographies) of Integrated Circuits becomes the new Chapter XII,
and the provisions therein are accordingly amended and renumbered, as follows:

Chapter **XII** [XIII].

INDUSTRIAL DESIGNS AND LAYOUT-DESIGNS (TOPOGRAPHIES) OF
INTEGRATED CIRCUITS

INDUSTRIAL DESIGNS

SEC. [112.]**87.** *Definition [of Terms.]* – [1.] An Industrial Design is any
composition of lines or colors or any three-dimensional form, whether or
not associated with lines or colors: Provided, That such composition or
form gives a special appearance to and can serve as pattern for an
industrial product or handicraft. **PARTS OR COMPONENTS OF SUCH**
PRODUCT OR HANDICRAFT CAN BE SUBJECT FOR INDUSTRIAL
DESIGN REGISTRATION. (Sec. 55a, R.A. No. 165)

SEC. [113.]**88.***[Substantive] Conditions for Protection.* - [113.1.]**88.1. ANY NEW CREATION RELATING TO THE FEATURES OF SHAPE, PATTERN, CONFIGURATION, ORNAMENTAL, OR ARTISTIC APPEARANCE OF AN ARTICLE OR INDUSTRIAL PRODUCT MAY BE PROTECTED AS AN INDUSTRIAL DESIGN.** (n) [Only industrial designs that are new or ornamental shall benefit from protection under this Act. (113.1)]

[113.2.]**88.2.** Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected. (113.2)

SEC. [115]. **89.***Several Industrial Designs in One Application.* - Two (2) or more industrial designs may be the subject of the same application: Provided, That they relate to the same [sub-]class of the International Classification or to the same set or composition of articles. **FOR THIS PURPOSE, A "SET OF ARTICLES" WHICH IS CUSTOMARILY SOLD OR USED TOGETHER AS A SET MAY BE MADE A PROPER SUBJECT MATTER IN ONE APPLICATION FOR DESIGN REGISTRATION, PROVIDED THAT EACH ARTICLE IS OF, OR HAS, THE SAME DESIGN OR A SUBSTANTIALLY SIMILAR DESIGN.** (115)

SEC. [119.]**90.***Application of Other Sections and Chapters.* - [119.1.]**90.1.** The following provisions relating to patents shall apply mutatis mutandis to an industrial design registration:

Section [21]**23**→-→Novelty

x x x

SECTION 44→- →**PUBLICATION OF PATENT APPLICATION;**

SECTION 45→- →**CONFIDENTIALITY BEFORE PUBLICATION;**

SECTION 49→- →**AMENDMENT OF APPLICATION;**

x x x

Chapter VIII→-→Rights of Patentees [and Infringement of Patents;]

[and;]

CHAPTER IX→- **INFRINGEMENT OF PATENT RIGHTS; AND**

Chapter **X**[XI] →-→Assignment and Transmission of **PATENT** Rights (119.1a)

[119.2.] **90.2.** If the essential elements of an industrial design which is the subject of an application have been obtained from the creation of another person without his consent, protection under this Chapter cannot be invoked against the injured party. (119.2)

[119.3. The following provisions relating to patents shall apply mutatis mutandis to a layout -design of integrated circuits registration:]

[x x x]

[119.4. *Rights Conferred to the Owner of a Layout-Design Registration.* - x x x]

SEC. [118.]**91.***The Term of Industrial Design [or Layout-Design] Registration.* - [118.1.]**91.1.** x x x

[118.2.]**91.2.** The registration of an industrial design x x x

1 [118.3.] **91.3.** The renewal fee x x x

2 [118.4.] **91.4.** The Regulations shall fix x x x

3 SEC. [120.]**92.** *Cancellation of Design Registration.* - [120.1.] **92.1.** At any
4 time during the term of the industrial design registration, any person
5 upon payment of the required fee, may petition the Director of Legal
6 Affairs to cancel the industrial design on any of the following grounds:

- 7 (a) If the subject matter of the industrial design is not registrable
8 within the terms of Sections **87** [112] and **88** [113];
9 (b) If the subject matter is not new; or
10 (c) If the subject matter of the industrial design extends beyond the
11 content of the application as originally filed. (120.1a)

12 [120.2.]**92.2.** Where the grounds for cancellation relate to a part of the
13 industrial design, cancellation may be effected to such extent only. The
14 restriction may be effected in the form of an alteration of the effected
15 features of the design. (120.2a)

16
17 **LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

18
19 **SEC.**[112.]**93. DEFINITION OF TERMS.** -[2.]**93.1.** Integrated Circuit
20 means a product, in its final form, or an intermediate form, in which the
21 elements, at least one of which is an active element and some or all of
22 the interconnections are integrally formed in and/or on a piece of
23 material, and which is intended to perform an electronic function; and
24 (112.2)

25 [3.]**93.2.** Layout-Design is synonymous with 'Topography' and means the
26 three-dimensional disposition, however expressed, of the elements, at
27 least one of which is an active element, and of some or all of the
28 interconnections of an integrated circuit, or such a three-dimensional
29 disposition prepared for an integrated circuit intended for manufacture.
30 (112.3)

31 **SEC.**[113.]**94. CONDITIONS FOR PROTECTION. -**

32 [113.3.]**94.1.** Only layout-designs of integrated circuits that are original
33 shall benefit from protection under this Act. A layout-design shall be
34 considered original if it is the result of its creator's own intellectual effort
35 and is not commonplace among creators of layout-designs and
36 manufacturers of integrated circuits at the time of its creation. (113.3)

37 [113.4.]**94.2.** A layout-design consisting of a combination of elements
38 and interconnections that are commonplace shall be protected only if the
39 combination, taken as a whole, is original. (113.4)

40 **SEC.** [119.3.] **95.APPLICATION OF OTHER SECTIONS AND**
41 **CHAPTERS. -** The following provisions relating to patents shall apply
42 mutatis mutandis to a layout -design of integrated circuits registration:

43 SECTION 28→ --> Right to a Patent;

44 SECTION 29→ --> First to File Rule;

45 SECTION 30→ --> Inventions Created Pursuant to a
46 Commission;

47 SECTION 33→ --> Appointment of Agent or
48 Representative;

49 SECTION 56→ --> Surrender of Patent;

SECTION 57→ - → Correction of Mistakes of the Office;

SECTION 58 → - → Correction of Mistakes in the Application;

SECTION 59 → - → Changes in Patents;

SECTION 60→ -→ Form and Publication of Amendment;

Chapter VII - → Remedies of a Person with a Right to Patent;

Chapter VIII→-→ Rights of Patentees and Infringement of Patents; ~~and~~

CHAPTER IX- INFRINGEMENT OF PATENT RIGHTS; AND

Provided, That the layout-design rights and limitation of layout-design rights provided hereunder shall govern:

[Chapter X → -→ Compulsory Licensing;]

Chapter XI → -→ Assignment and Transmission of **PATENT Rights; AND**

PART III, CHAPTER IV →-→ COMPULSORY LICENSING.(119.3a)

SEC. [119.4.]96. *Rights Conferred [to]ON the Owner of a Layout-Design Registration.* - The owner of a layout-design registration shall enjoy the following rights:

- (1) to reproduce, whether by incorporation in an integrated circuit or otherwise, the registered layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality; and
- (2) to sell or otherwise distribute for commercial purposes the registered layout-design, an article or an integrated circuit in which the registered layout-design is incorporated. (119.4)

SEC. [119.5.]97. *Limitations of Layout Rights.* - The owner of a layout design has no right to prevent third parties from reproducing, selling or otherwise distributing for commercial purposes the registered layout-design in the following circumstances:

- (1) Reproduction of the registered layout-design x x x
- (2) Where the act is performed in respect of a layout-design x x x
- (3) Where the act is performed in respect of a registered lay-out-design x x x
- (4) In respect of an integrated circuit x x x
- (5) Where the act is performed in respect of an identical layout-design x x x

SEC. [118.5.]98. TERM OF PROTECTION OF LAYOUT-DESIGN REGISTRATION. -[118.5.]Registration of a layout-design shall be valid for a period of ten (10) years, without renewal, and such validity to be counted from the date of commencement of the protection accorded to the layout-design. The protection of a layout-design under this Act shall commence:

- a) on the date of the first commercial exploitation, anywhere in the world, of the layout-design by or with the consent of the right holder: Provided, That an application for registration is filed with

- the Intellectual Property Office within two (2) years from such date of first commercial exploitation; or
- b) on the filing date accorded to the application for the registration of the layout-design if the layout-design has not been previously exploited commercially anywhere in the world. (118.5)

SEC. [120.3.]99.GROUNDS FOR CANCELLATION OF LAYOUT-DESIGN OF INTEGRATED CIRCUITS.- Any interested person may petition that the registration of a layout-design be cancelled on the ground that:

- (i) the layout-design is not protectable under this Act;
- (ii) the right holder is not entitled to protection under this Act; or
- (iii) where the application for registration of the layout-design, was not filed within two (2) years from its first commercial exploitation anywhere in the world.

Where the grounds for cancellation are established with respect only to a part of the layout-design, only the corresponding part of the registration shall be cancelled.

Any cancelled layout-design registration or part thereof, shall be regarded as null and void from the beginning and may be expunged from the records of the Intellectual Property Office. Reference to all cancelled layout-design registration shall be published in the IPO Gazette.

COMMON PROVISIONS

SEC. [114.]100.Contents of the Application. - [114.1.]100.1. Every application for registration of an industrial design or layout-design shall contain:

- (a) A request for registration of the industrial design or layout-design;
- (b) Information identifying the applicant;
- (c) An indication of the kind of article of manufacture or handicraft to which the industrial design or layout-design shall be applied;
- (d) A representation of the article of manufacture or handicraft by way of drawings, photographs or other adequate graphic representation of the industrial design or of the layout-design as applied to the article of manufacture or handicraft which clearly and fully discloses those features for which protection is claimed; and
- (e) The name and address of the creator, or where the applicant is not the creator, a statement indicating the origin of the right to the industrial design or layout-design registration. (114.1)

[114.2.] **100.2** The application may be accompanied by x x x

SEC. [116.]101. FORMALITY Examination. - [116.1.]101.1. The Office shall accord as the filing date x x x

[116.2.] **101.2.** If the application does not meet these requirements, the filing date should be that date when all the elements specified in Sec. 100 [114] are filed or the mistakes corrected. Otherwise if the requirements are not complied within the prescribed period, the application shall be considered withdrawn. (116.2)

[116.3.] **101.3.** [After the application has been accorded a filing date and the required fees paid on time, the applicant shall comply with the requirements of Sec. 114 within the prescribed period, otherwise the application shall be considered withdrawn.]**AFTER THE CONDUCT OF A FORMALITY EXAMINATION AND UPON FULL COMPLIANCE WITH THE PRESCRIBED FORMALITY REQUIREMENTS, THE APPLICATION FOR REGISTRATION SHALL BE PUBLISHED. THIRD PARTIES MAY FILE WITH THE DIRECTOR OF PATENTS ADVERSE INFORMATION CITING GROUNDS OR INFORMATION THAT THE DESIGN IS NOT NEW OR NOT REGISTRABLE. THE BUREAU OF PATENTS SHALL ISSUE A CERTIFICATE OF REGISTRATION OF AN INDUSTRIAL**

DESIGN OR LAYOUT-DESIGN THAT COMPLIES WITH THE REQUIREMENTS OF SECS. 87 OR 93 (DEFINITION OF TERMS) AND SECS. 88 OR 94 (CONDITIONS FOR PROTECTION).

AN APPLICANT IN A PENDING DESIGN APPLICATION MAY REQUEST FOR THE DEFERMENT OF THE PUBLICATION OF THE APPLICATION FOR A PERIOD NOT MORE THAN THIRTY (30) MONTHS FROM DATE OF FILING OR PRIORITY DATE. (n)

[116.4.]101.4. The Office shall examine whether the industrial design or layout-design complies with requirements of SecS. 87 OR 93 [112](Definition[s]—OF TERMS) AND 88 OR 94 [113] ([Substantive] Conditions for Protection). (116.4)

SEC. [117.] 102.Registration. – [117.1.] 102.1. Where the Office finds that the RESPECTIVE conditions referred to in SecS. 88 OR 94 [113] are fulfilled, it shall order that registration be effected in the industrial design or layout-design register and cause the issuance of an industrial design or layout-design certificate of registration; otherwise, it shall refuse the application.

[117.2.] 102.2. The form and contents x x x

[117.3.] 102.3. Registration shall be published x x x

[117.4.] 102.4. The Office shall record in the register any or change in the identity of the proprietor of the industrial design or layout-design or his representative, if proof thereof is furnished to it. A fee shall be paid, with the request to record the change in the identity of the proprietor. If the fee is not paid, the request shall be deemed not to have been filed. In such case, the former proprietor and the former representative shall remain subject to the rights and obligations as provided in this Act. (117.4)

[117.5.] 102.5. Anyone may inspect the Register x x x

SECTION 36. A new Part III on Innovation and Licensing is incorporated in the IP Code, to read, as follows:

PART III.
INNOVATION AND LICENSING

SECTION 37. A new Chapter I entitled Preliminary Provisions, under Part III is incorporated in the IP Code, to read, as follows:

CHAPTER I.
PRELIMINARY PROVISIONS

SEC. 103. DEFINITION OF TERMS. - AS USED IN PART III:

- A) "BUREAU" MEANS THE BUREAU OF INNOVATION AND BUSINESS DEVELOPMENT;
- B) "COMMERCIALIZATION" REFERS TO THE PROCESS OF DERIVING INCOME OR PROFIT FROM A TECHNOLOGY, SUCH AS THE CREATION OF A SPIN-OFF COMPANY, OR THROUGH LICENSING OR THE SALE OF THE TECHNOLOGY AND/OR INTELLECTUAL PROPERTY RIGHTS;
- C) "INNOVATION", AS PREVIOUSLY DEFINED IN SEC. 4.3., MEANS THE CREATION OF NEW IDEAS

1 THAT RESULTS IN THE DEVELOPMENT OF NEW OR
2 IMPROVED PRODUCTS, PROCESSES OR SERVICES WHICH
3 ARE THEN SPREAD OR TRANSFERRED ACROSS THE
4 MARKET;

5 D) "INNOVATION AGREEMENT" REFERS
6 TO A CONTRACT ENTERED INTO BY THE BUREAU WITH
7 ANOTHER PERSON AND/OR OTHER AGENCIES AND
8 INSTITUTIONS;

9 E) "INNOVATION AND TECHNOLOGY
10 SUPPORT OFFICES" REFER TO PATENT LIBRARIES OF
11 UNIVERSITIES AND RESEARCH-RELATED INSTITUTIONS
12 THAT FACILITATE THE PROMOTION, CREATION,
13 PROTECTION, COMMERCIALIZATION, AND UTILIZATION OF
14 INTELLECTUAL PROPERTY;

15 F) "INNOVATION FUND" REFERS TO
16 FUNDS ADMINISTERED BY THE GOVERNMENT RELATED TO
17 INNOVATION AND WHICH MAY BE TAPPED BY THE BUREAU
18 TO SUPPORT INNOVATION ACTIVITIES INCLUDING GRANTS
19 FOR RESEARCH AND DEVELOPMENT, INTELLECTUAL
20 PROPERTY VALUATION, AND TECHNICAL AND MATERIAL
21 SUPPORT FOR COMMERCIALIZATION; AND

22 G) "LICENSING" REFERS EITHER TO
23 VOLUNTARY LICENSING, COMPULSORY LICENSING, OR
24 SPECIAL COMPULSORY LICENSING.

25
26 **SECTION 38.** A new Chapter II entitled "Promoting Creation, Innovation,
27 Utilization, and Commercialization of Intellectual Property", under Part III is
28 incorporated in the IP Code, to read, as follows:

29
30 **CHAPTER II.**
31 **PROMOTING CREATION, INNOVATION, UTILIZATION, AND**
32 **COMMERCIALIZATION OF INTELLECTUAL PROPERTY**

33
34 **SEC. 104. STIMULATING INNOVATION.** - THE BUREAU SHALL CRAFT
35 OR RECOMMEND AND IMPLEMENT POLICIES AND PROGRAMS TO
36 PROMOTE AND SUPPORT INNOVATION THROUGH, BUT NOT
37 LIMITED TO THE FOLLOWING:

38
39 A) CAPACITY BUILDING ON
40 INTELLECTUAL PROPERTY MANAGEMENT AND
41 COMMERCIALIZATION;

42 B) TECHNICAL ASSISTANCE ON
43 VALUATION OF INTELLECTUAL PROPERTY;

44 C) ASSISTANCE TO INVENTORS AND
45 AND MICRO-, SMALL-, AND MEDIUM-SIZED ENTERPRISES IN
46 GETTING SUPPORT FROM THE INNOVATION FUND FOR
47 RESEARCH AND DEVELOPMENT, MANAGEMENT, AND
48 COMMERCIALIZATION OF THEIR INTELLECTUAL PROPERTY;

49 D) INNOVATION AGREEMENTS
50 COVERING INTELLECTUAL PROPERTY PROMOTION,
51 CREATION, PROTECTION, COMMERCIALIZATION, AND
52 UTILIZATION; AND

53 E) ESTABLISHMENT OF INNOVATION
54 AND TECHNOLOGY SUPPORT OFFICES IN UNIVERSITIES AND
55 RESEARCH-RELATED ENTITIES.

56
57 **SECTION 39.** Section 230 of the IP Code is hereby renumbered as Section 105
58 and shall be within Part III, Chapter II, of the IP Code, as follows:

59 **SEC. [230.]105.** *Adoption of Intellectual Property (IP) Policies.* - Schools
60 and universities shall adopt intellectual property policies that would
61 govern the use and creation of intellectual property with the purpose of
62 safeguarding the intellectual creations of the learning institution and its
63 employees, and adopting locally-established industry practice fair use

1 guidelines. These policies may be developed in relation to licensing
2 agreements entered into by the learning institution with a collective
3 licensing organization.
4

5 **SECTION 40.** The Chapter on Voluntary Licensing under the Law on Patents is
6 hereby designated under Part III as Chapter III, and the provisions therein are is
7 incorporated, renumbered, and/or amended to read, as follows:

8 **Chapter III.**
9 **VOLUNTARY LICENSING**

10
11 SEC.[85.] **106.** *Voluntary License Contract.* -

12
13 **106.1.** To encourage the transfer and dissemination of technology,
14 prevent or control practices and conditions that may in particular cases
15 constitute an abuse of intellectual property rights having an adverse
16 effect on competition and trade, all technology transfer arrangements
17 shall comply with the provisions of this Chapter. (85)

18
19 [SEC. 87.] **106.2.** *Prohibited Clauses.* - Except in cases under Section
20 [91]**106.4**, the following provisions shall be deemed prima facie to have
21 an adverse effect on competition and trade:

- 22
23 **A)** [87.1.] Those which impose upon the
24 licensee the obligation to acquire from a specific source capital
25 goods, intermediate products, raw materials, and other
26 technologies, or of permanently employing personnel indicated by
27 the licensor;
28 **B)** [87.2.] Those pursuant to which the
29 licensor reserves the right to fix the sale or resale prices of the
30 products manufactured on the basis of the license;
31
32 **c)** [87.3.] Those that contain restrictions regarding the volume and
33 structure of production;
34
35 **d)** [87.4.] Those that prohibit the use of competitive technologies in a
36 non-exclusive technology transfer agreement;
37
38 **e)** [87.5.] Those that establish a full or partial purchase option in favor of
39 the licensor;
40
41 **f)** [87.6.] Those that obligate the licensee to transfer for free to the
42 licensor the inventions or improvements that may be obtained through
43 the use of the licensed technology;
44
45 **g)** [87.7.] Those that require payment of royalties to the owners of patents
46 for patents which are not used;
47
48 **h)** [87.8.] Those that prohibit the licensee to export the licensed product
49 unless justified for the protection of the legitimate interest of the licensor
50 such as exports to countries where exclusive licenses to manufacture
51 and/or distribute the licensed product(s) have already been granted;
52
53 **i)** [87.9.] Those which restrict the use of the technology supplied after the
54 expiration of the technology transfer arrangement, except in cases of
55 early termination of the technology transfer arrangement due to reason(s)
56 attributable to the licensee;
57
58 **j)** [87.10.] Those which require payments for patents and other industrial
59 property rights after their expiration, termination arrangement;
60
61 **k)** [87.11.] Those which require that the technology recipient shall not
62 contest the validity of any of the patents of the technology supplier;
63

1 l) [87.12.] Those which restrict the research and development activities of
2 the licensee designed to absorb and adapt the transferred technology to
3 local conditions or to initiate research and development programs in
4 connection with new products, processes or equipment;

5
6 m) [87.13.] Those which prevent the licensee from adapting the imported
7 technology to local conditions, or introducing innovation to it, as long as
8 it does not impair the quality standards prescribed by the licensor;

9
10 n) [87.14.] Those which exempt the licensor for liability for non-
11 fulfillment of his responsibilities under the technology transfer
12 arrangement and/or liability arising from third party suits brought about
13 by the use of the licensed product or the licensed technology; and

14
15 o) [87.15.] Other clauses with equivalent effects. (87a) (Sec. 33-C(2), RA
16 165a)

17
18 [SEC. 88.] **106.3. Mandatory Provisions.** - The following provisions shall
19 be included in voluntary license contracts:

20
21 a) [88.1.] That the laws of the Philippines shall govern the interpretation
22 of the same and in the event of litigation, the venue shall be the proper
23 court in the place where the licensee has its principal office;

24
25 b) [88.2.] Continued access to improvements in techniques and processes
26 related to the technology shall be made available during the period of the
27 technology transfer arrangement;

28
29 c) [88.3.] In the event the technology transfer arrangement shall provide
30 for arbitration, the Procedure of Arbitration of the Arbitration Law of the
31 Philippines or the Arbitration Rules of the United Nations Commission on
32 International Trade Law (UNCITRAL) or the Rules of Conciliation and
33 Arbitration of the International Chamber of Commerce (ICC) shall apply
34 and the venue of arbitration shall be the Philippines or any neutral
35 country; and

36
37 d) [88.4.] The Philippine taxes on all payments relating to the technology
38 transfer arrangement shall be borne by the licensor. (88a)

39
40 **106.4. [SEC. 91.] Exceptional Cases.** - In exceptional or meritorious cases
41 where substantial benefits will accrue to the economy, such as high
42 technology content, increase in foreign exchange earnings, employment
43 generation, regional dispersal of industries and/or substitution with or
44 use of local raw materials, or in the case of Board of Investments,
45 registered companies with pioneer status, exemption from any of the
46 above requirements may be allowed by the [Documentation, Information
47 and Technology Transfer] Bureau after evaluation thereof on a case by
48 case basis. (91a)

49
50 SEC.[92.] **107. EFFECT OF Non-Registration with the [Documentation,**
51 **Information and Technology Transfer] Bureau OF INNOVATION AND**
52 **BUSINESS DEVELOPMENT.** - Technology transfer arrangements that
53 conform with the provisions of Sections **106.2**[86]and **106.3**[87]need not
54 be registered with the [Documentation, Information and Technology
55 Transfer] Bureau **OF INNOVATION AND BUSINESS DEVELOPMENT.**
56 Non-conformance with any of the **SAID** provisions [of Sections 87 and
57 88], however, shall automatically render the technology transfer
58 arrangement unenforceable, unless said technology transfer arrangement
59 is approved and registered with the [Documentation, Information and
60 Technology Transfer] Bureau under the provisions of Section
61 **106.4**[91]on exceptional cases. (92a)

62
63 SEC.[89.] **108. RIGHTS IN A LICENSING AGREEMENT.** -

64 **108.1. Rights of Licensor.** - In the absence of any provision to the

contrary in the technology transfer arrangement, the grant of a license shall not prevent the licensor from granting further licenses to third person nor from exploiting the subject matter of the technology transfer arrangement himself. (89) (Sec. 33-B, R.A. 165a)

[SEC.90.] **108.2.Rights of Licensee.** - The licensee shall be entitled to exploit the subject matter of the technology transfer arrangement during the whole term of the technology transfer arrangement. (90) (Sec. 33-C (1), R.A. 165a)

SEC.[86.] **109.Jurisdiction to Settle Disputes on Royalties.** - The Director of the [Documentation, Information and Technology Transfer] Bureau **OF LEGAL AFFAIRS** shall **HAVE** [exercise quasi-judicial] jurisdiction in the settlement of disputes between parties to a technology transfer arrangement arising from technology transfer payments, including the fixing of appropriate amount or rate of royalty. (86a)

SECTION 41. The Chapter on Compulsory Licensing under the Law on Patents is hereby designated under Part III as Chapter IV, and the provisions therein are is incorporated, renumbered, and/or amended to read, as follows:

Chapter IV COMPULSORY LICENSING

SEC.[93.] **110.Grounds for Compulsory Licensing.** - The Director General [of the Intellectual Property Office] may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:

[93.1.] **110.1.** National emergency or other circumstances of extreme urgency;

[93.2.] **110.2.** Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the appropriate agency of the Government, so requires;[or]

[93.3.] **110.3.** Where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; ~~or~~

[93.4.] **110.4.** In case of public non-commercial use of the patent[by the patentee, without satisfactory reason;]

[93.5.] **110.5.** If the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: Provided, That the importation of the patented article shall constitute working or using the patent; (Secs. 34, 34-A, 34-B, R.A. No. 165a) ~~and~~ **OR**

[93.6.] **110.6.** Where the demand for patented drugs and medicines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health.

(93a) (As amended by Republic Act No.9502 or the Universally Accessible Cheaper and Quality Medicines Act of 2008)

[SEC.93-A.Procedures on Issuance of a Special Compulsory License under the TRIPS Agreement. -]

[93-A.1. The Director General of the Intellectual Property Office, upon the written recommendation of the Secretary of the Department of Health, shall, upon filing of a petition, grant a special compulsory license for the

1 importation of patented drugs and medicines. The special compulsory
2 license for the importation contemplated under this provision shall be an
3 additional special alternative procedure to ensure access to quality
4 affordable medicines and shall be primarily for domestic consumption:
5 Provided, That adequate remuneration shall be paid to the patent owner
6 either by the exporting or importing country. The compulsory license
7 shall also contain a provision directing the granteethe license to exercise
8 reasonable measures to prevent the re-exportation of the products
9 imported under this provision.]

10
11 [The grant of a special compulsory license under this provision shall be
12 an exception to Sections 100.4and 100.6 of Republic Act No. 8293 and
13 shall be immediately executory.]

14
15 [No court, except the Supreme Court of the Philippines, shall issue any
16 temporary restraining order or preliminary injunction or such other
17 provisional remedies that will prevent the grant of the special compulsory
18 license. (93-A.1a)]

19
20 [93-A.2. A compulsory license shall also be available for the manufacture
21 and export of drugs and medicines to any country having insufficient or
22 no manufacturing capacity in the pharmaceutical sector to address
23 public health problems: Provided, That, a compulsory license has been
24 granted by such country or such country has, by notification or
25 otherwise, allowed importation into its jurisdiction of the patented drugs
26 and medicines from the Philippines in compliance with the TRIPS
27 Agreement. (93-A.2a)]

28
29 [93-A.3. The right to grant a special compulsory license under this
30 section shall not limit or prejudice the rights, obligations and flexibilities
31 provided under the TRIPS Agreement and under Philippine laws,
32 particularly Section 72.1 and Section 74 of the Intellectual Property
33 Code, as amended under this Act. It is also without prejudice to the
34 extent to which drugs and medicines produced under a compulsory
35 license can be exported as allowed in the TRIPS Agreement and
36 applicable laws. (93-A.3)]

37
38 SEC.[94.] **111. Period for Filing a Petition for a Compulsory License. –**
39 [94.1.] **111.1.** A compulsory license may not be applied for on the ground
40 stated in Subsection **110.5** [93.5] before the expiration of a period of four
41 (4) years from the date of filing of the application or three (3) years from
42 the date of the patent whichever period expires **later**[last.]

43
44 [94.2.] **111.2.** A compulsory license which is applied for on any of the
45 grounds stated in Subsections **110.2, 110.3, 110.4, and 110.6**[93.2,
46 93.3, 93.4 and 93.6]and Section **114**[97]-may be applied for at any time
47 after the grant of the patent. (94.2a) (Sec. 34(1), R.A. No. 165)

48 (As amended by Republic Act No.9502 or the Universally Accessible
49 Cheaper and Quality Medicines Act of 2008)

50
51 SEC. [95.] **112. Requirement to Obtain a License on Reasonable**
52 **Commercial Terms -**

53 [95.1.] **112.1.** The license will only be granted after the petitioner has
54 made efforts to obtain authorization from the patent owner on reasonable
55 commercial terms and conditions but such efforts have not been
56 successful within a reasonable period of time. (95.1a)

57
58 [95.2.] **112.2.** The requirement under Subsection **112.1** [95.1] shall not
59 apply in any of the following cases:

60
61 (a) Where the petition for compulsory license seeks to remedy a
62 practice determined after judicial or administrative process to be anti-
63 competitive;

(b) In situations of national emergency or other circumstances of extreme urgency;

(c) In cases of public non-commercial use; and

(d) In cases where the demand for the patented drugs and medicines in the Philippines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health. (95.2a)

[95.3.] **112.3.** In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable. (95.3)

[95.4.] **112.4.** In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (95.4)

[95.5.] **112.5.** Where the demand for the patented drugs and medicines in the Philippines is not being met to an adequate extent and on reasonable terms, as determined by the Secretary of the Department of Health, the right holder shall be informed promptly. (95.5.)

(As amended by Republic Act No.9502 or the Universally Accessible Cheaper and Quality Medicines Act of 2008)

SEC.[96.] **113.** *Compulsory Licensing of Patents Involving SEMICONDUCTOR [Semi-Conductor] Technology.* - In the case of compulsory licensing of **SEMICONDUCTOR**[semi-conductor] technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (96)

SEC. [97.] **114.***Compulsory License Based on Interdependence of Patents.*- If the invention protected by a patent, hereafter referred to as the "second patent," within the country cannot be worked without infringing another patent, hereafter referred to as the "first patent," granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

[97.1.] **114.1.** The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

[97.2.] **114.2.** The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

[97.3.] **114.3.** The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

[97.4.] **114.4.** The terms and conditions of Sections **112, 113, AND 115 TO 117** [95, 96 and 98 to 100] of this Act. (Sec. 34-C, R.A. No. 165a)

SEC. [98.] **115.** *Form and Contents of Petition.* - The petition for compulsory licensing must be in writing, verified by the petitioner and accompanied by payment of the required filing fee. It shall contain the name and address of the petitioner as well as those of the respondents, the number and date of issue of the patent in connection with which compulsory license is sought, the name of the patentee, the title of the

invention, the statutory grounds upon which compulsory license is sought, the ultimate facts constituting the petitioner's cause of action, and the relief prayed for. (98) (Sec. 34-D, R.A. No. 165)

SEC. [99.] **116. PROCEDURE FOR COMPULSORY LICENSING. -**

116.1. Notice of Hearing. - 99.1. Upon filing of a petition **WITH THE BUREAU OF LEGAL AFFAIRS**, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patent owner and all persons having grants or licenses, or any other right, title or interest in and to the patent and invention covered thereby as appears of record in the Office, and of notice of the date of hearing thereon, on such persons and petitioner. The resident agent or representative appointed in accordance with Section 33 hereof, shall be bound to accept service of notice of the filing of the petition within the meaning of this Section.

[99.2.] In every case, the notice shall be published by the said Office in a newspaper of general circulation, once a week for three (3) consecutive weeks and once in the IPO Gazette at applicant's expense. (99.2.) (Sec. 34-E, R.A. No. 165)

116.2. RECOMMENDATION TO THE DIRECTOR GENERAL. - AFTER THE CONDUCT OF HEARING AND APPROPRIATE PROCEEDINGS BY THE BUREAU OF LEGAL AFFAIRS, THE DIRECTOR OF LEGAL AFFAIRS SHALL MAKE THE RECOMMENDATION TO THE DIRECTOR GENERAL ON WHETHER OR NOT TO GIVE DUE COURSE TO THE PETITION FOR COMPULSORY LICENSING.

THE OFFICE OF THE DIRECTOR GENERAL SHALL REVIEW AND APPROVE THE RECOMMENDATION OF THE DIRECTOR OF LEGAL AFFAIRS, AND SHALL HAVE THE AUTHORITY TO UPHOLD, IN WHOLE OR PART, OR DENY THE RECOMMENDATION ON THE PETITION FOR COMPULSORY LICENSE.

SEC. [100.] **117. Terms and Conditions of Compulsory License. -**

117.1. The basic terms and conditions including the rate of royalties of a compulsory license shall be fixed by the Director **GENERAL** [of Legal Affairs] subject to the following conditions:

[100.1.] **a)** The scope and duration of such license shall be limited to the purpose for which it was authorized; (100.1)

[100.2.] **b)** The license shall be non-exclusive; (100.2)

[100.3.] **c)** The license shall be non-assignable, except with that part of the enterprise or business with which the invention is being exploited; (100.3)

[100.4.] **d)** Use of the subject matter of the license shall be devoted predominantly for the supply of the Philippine market: Provided, That this limitation shall not apply where the grant of the license is based on the ground that the patentee's manner of exploiting the patent is determined by judicial or administrative process, to be anti-competitive. (100.4)

100.5. **117.2.** The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: Provided, That adequate protection shall be afforded to the legitimate interest of the licensee; and (100.5)

[100.6.] **117.3.** The patentee shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process, to be anti-competitive, the need to correct the anti-competitive practice may be

1 taken into account in fixing the amount of remuneration. (100.6) (Sec.
2 35-B, R.A. No. 165a)

3
4 SEC. [[101.]] **118.** *Amendment, Cancellation, Surrender of Compulsory*
5 *License*[- 101.1.] **118.1.** Upon the request of the patentee or the licensee,
6 the Director **GENERAL**[of Legal Affairs] may amend the decision granting
7 the compulsory license, upon proper showing of new facts or
8 circumstances justifying such amendment.

9
10 [101.2.] **118.2.** Upon the request of the patentee, the said Director
11 **GENERAL** may cancel the compulsory license:

- 12
13 (a) If the ground for the grant of the compulsory license no longer
14 exists and is unlikely to recur;
15 (b) if the licensee has neither begun to supply the domestic market
16 nor made serious preparation therefor; **or**
17 (c) if the licensee has not complied with the prescribed terms of the
18 license; (101.2)

19
20 [101.3.] **118.3.** The licensee may surrender the license by a written
21 declaration submitted to the Office. (101.3)

22
23 [101.4.] **118.4** The said Director **GENERAL** shall cause the amendment,
24 surrender, or cancellation in the Register, notify the patentee, and/or the
25 licensee, and cause notice thereof to be published in the IPO Gazette.
26 (101.4) (Sec. 35-D, R.A. No. 165a)

27
28 SEC. [102.] **119.** *Licensee's Exemption from Liability.* - Any person who
29 works a patented product, substance and/or process under a license
30 granted under this Chapter, shall be free from any liability for
31 infringement: Provided however, That in the case of voluntary licensing,
32 no collusion with the licensor is proven. This is without prejudice to the
33 right of the rightful owner of the patent to recover from the licensor
34 whatever he may have received as royalties under the license. (102) (Sec.
35 35-E, R.A. No. 165a)

36
37 **SECTION 42.** A new Chapter V entitled "Special Compulsory Licensing" is
38 hereby designated under Part III of the IP Code to which Sec. 93-A is hereby
39 transferred and amended to read as follows:

40 **CHAPTER V**

41 **SPECIAL COMPULSORY LICENSING**

42 SEC.[93-A.] **120.** *Procedures on Issuance of a Special Compulsory License*
43 *under the TRIPS Agreement.* -

44
45 [93-A.1.] **120.1.** The Director General of the Intellectual Property Office,
46 upon the written recommendation of the Secretary of the Department of
47 Health, shall, upon filing of a petition, grant a special compulsory license
48 for the importation of patented drugs and medicines. The special
49 compulsory license for the importation contemplated under this
50 provision shall be an additional special alternative procedure to ensure
51 access to quality affordable medicines and shall be primarily for domestic
52 consumption: Provided, That adequate remuneration shall be paid to the
53 patent owner either by the exporting or importing country. The
54 compulsory license shall also contain a provision directing the grantee
55 **OF** the license to exercise reasonable measures to prevent the re-
56 exportation of the products imported under this provision. **THE**
57 **DIRECTOR GENERAL AND THE SECRETARY OF HEALTH SHALL**
58 **PROMULGATE JOINTLY THE RULES OF PROCEDURE FOR THE**
59 **GRANT OF SPECIAL COMPULSORY LICENSES.**

60 The grant of a special compulsory license under this provision shall be
61

an exception to Sections **117.4** [100.4] and **117.6 UNDER THIS ACT** [100.6 of Republic Act No. 8293] and shall be immediately executory.

No court, except the Supreme Court of the Philippines, shall issue any temporary restraining order or preliminary injunction or such other provisional remedies that will prevent the grant of the special compulsory license. (93-A.1a)

[93-A.2.] **120.2.** A compulsory license shall also be available for the manufacture and export of drugs and medicines to any country having insufficient or no manufacturing capacity in the pharmaceutical sector to address public health problems: Provided, That, a compulsory license has been granted by such country or such country has, by notification or otherwise, allowed importation into its jurisdiction of the patented drugs and medicines from the Philippines in compliance with the TRIPS Agreement. (93-A.2a)

[93-A.3.] **120.3.** The right to grant a special compulsory license under this section shall not limit or prejudice the rights, obligations and flexibilities provided under the TRIPS Agreement and under Philippine laws, particularly Section 72.1 and Section 74 of **this Act** [the Intellectual Property Code], as amended [under this Act]. It is also without prejudice to the extent to which drugs and medicines produced under a compulsory license can be exported as allowed in the TRIPS Agreement and applicable laws. (93-A.3a)

SECTION 43. Part III of the IP Code is hereby amended to become Part IV on Trademarks, Service Marks, and Trade Names of the IP Code, to read as follows:

Part IV [III]

[THE LAW ON]

TRADEMARKS, SERVICE MARKS, AND TRADE NAMES

SECTION 44. Sec. 121 of the IP Code shall be designated as Part IV, Chapter I, General Provisions and is hereby amended to read, as follows:

CHAPTER I.

GENERAL PROVISIONS

SEC. 121. *Definitions.* - As used in Part IV[III], the following terms have the following meanings:

121.1. "Mark" means any [visible] sign **OR ANY COMBINATION OF SIGNS AS MAY BE PRESCRIBED BY THE REGULATIONS**, capable of distinguishing the goods (trademark) or services (service mark) of an enterprise **FROM THAT OF ANOTHER**; [and shall include a stamped or marked container of goods;] (121.1.a) (Sec. 38, R.A. No. 166a)

121.2. "Collective mark" means any [visible] sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark; (Sec. 40, R.A. No. 166a)

121.3. "Trade name" means the name or designation identifying or distinguishing an enterprise; (Sec. 38, R.A. No. 166a)

121.4. "Bureau" means the Bureau of Trademarks;

121.5. "Director" means the Director of Trademarks;

121.6. "Regulations" means the Rules of Practice in Trademarks and Service Marks formulated by the Director of Trademarks and approved by the Director General;[and]

121.7. "Examiner" means the trademark examiner. (Sec. 38, R.A. No. 166a)

121.8. "CERTIFICATION MARK" MEANS ANY SIGN, USED OR INTENDED FOR USE IN COMMERCE WITH THE OWNER'S PERMISSION BY SOMEONE OTHER THAN ITS OWNER, TO CERTIFY REGIONAL OR OTHER GEOGRAPHIC ORIGIN, MATERIAL, MODE OF MANUFACTURE, QUALITY, ACCURACY, OR OTHER CHARACTERISTICS OF SOMEONE'S GOODS OR SERVICES, OR THAT THE WORK OR LABOR ON GOODS OR SERVICES WAS PERFORMED BY MEMBERS OF A UNION OR OTHER ORGANIZATIONS; AND (N)

121.9. "COUNTERFEIT TRADEMARK GOODS" SHALL MEAN ANY GOODS, INCLUDING PACKAGING, BEARING WITHOUT AUTHORIZATION A TRADEMARK WHICH IS IDENTICAL TO THE TRADEMARK VALIDLY REGISTERED IN RESPECT OF SUCH GOODS, OR WHICH CANNOT BE DISTINGUISHED IN ITS ESSENTIAL ASPECTS FROM SUCH A TRADEMARK, AND WHICH THEREBY INFRINGES THE RIGHTS OF THE OWNER OF THE TRADEMARK IN QUESTION. (N)

SECTION 45. Sec. 122 of the IP Code is hereby designated as Part IV, Chapter II, Right to a Mark, and is hereby amended, to read as follows:

CHAPTER II RIGHT TO A MARK

SEC. 122. [*How Marks are Acquired.*] --**ACQUISITION OF RIGHTS TO A MARK. - ANY PERSON WHO INTENDS TO USE OR USES A MARK IN COMMERCE MAY FILE AN APPLICATION FOR ITS REGISTRATION.**The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R A. No. 166a).

SECTION 46. A new Sec. 122A is hereby inserted after Sec. 122 under Part IV, Chapter II, to read as follows:

SEC. 122A. FIRST TO FILE RULE. - WHERE TWO OR MORE APPLICATIONS ARE FILED FOR IDENTICAL OR CONFUSINGLY SIMILAR MARKS IN CONNECTION WITH THE SAME OR RELATED GOODS OR SERVICES RESULTING IN LIKELIHOOD OF CONFUSION, THE RIGHT TO THE MARK SHALL BELONG TO THE APPLICANT WHO HAS THE EARLIEST FILING DATE OR, THE EARLIEST PRIORITY DATE.

SECTION 47. Sec. 123 of the IP Code is hereby designated as Part IV, Chapter III, Registrability, and is hereby amended to read as follows:

CHAPTER III REGISTRABILITY

SEC. 123. *Registrability.* - **123.1. A MARK MAY BE REGISTERED IF IT IS DISTINCTIVE. ON THE OTHER HAND, A MARK CANNOT BE REGISTERED IF IT:**

(a) Consists of **MATTER WHICH:**

- (i) **IS OFFENSIVE**, immoral, deceptive or scandalous, **OR SUGGESTS A DISTORTION OF VALUES**;
- (ii) [matter which] may disparage or falsely suggest a connection with **LIVING OR DEAD** persons, [living or dead,] institutions, **ENTITIES**, beliefs, **CUSTOMS, VALUES**, or national symbols, **HERITAGE, OR PATRIMONY**, or
- (iii) brings **ANY OF** the[m] **FOREGOING** into contempt, **DISRESPECT**, or disrepute; (a)
- (b) Consists of the flag, [or] coat of arms, or other insignia, of the Philippines or any of its political subdivisions, **OR OF ITS AGENCIES**, or of any foreign nation, **OR OF ANY FOREIGN INTERNATIONAL ORGANIZATION**, or any simulation thereof;
- (c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of [his widow]**THE SURVIVING SPOUSE**, if any, except by written consent of the [widow]**LATTER**; (a)
- (d) Is identical with **OR IS CONFUSINGLY SIMILAR TO** a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of: (i) the same [goods or services,] or [(ii)] closely related goods or services, [or (iii)] If it nearly resembles such a mark] as to be likely to deceive or cause confusion; (a)
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally **OR** [and] in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
- (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, [which is registered in the Philippines] with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;
- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, **SUBJECT MATTER**, time or production of the goods or rendering of the services, or other characteristics of the goods or services, **EXCEPT WHEN THE APPLICATION IS FOR THE REGISTRATION OF A COLLECTIVE OR CERTIFICATION MARK COVERING GEOGRAPHICAL INDICATION**;
- (k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value; (a)
- (l) Consists of color alone, unless defined by a given form; or (a)

- (m) **LACKS DISTINCTIVENESS;** (n)
- (n) **IMPAIRS THE DISTINCTIVENESS OR HARMS THE REPUTATION OF A WELL-KNOWN MARK, AS DECLARED BY COMPETENT AUTHORITY, WHETHER REGISTERED OR NOT; OR** (n)
- (o) [(m)] Is contrary to public order, **PUBLIC POLICY**, or morality.

123.2. IN DETERMINING THE LIKELIHOOD OF CONFUSION IN PARAGRAPHS (D), (E), AND (F), PRIMORDIAL CONSIDERATION SHALL BE GIVEN TO THE DOMINANT FEATURE OF THE MARKS. (n)

THE SIMILARITY OF THE GOODS OR SERVICES COVERED BY THE MARKS ARE ALSO CONSIDERED. GOODS OR SERVICES THAT ARE IN THE SAME CLASS ARE NOT NECESSARILY SIMILAR. LIKEWISE, GOODS OR SERVICES THAT ARE IN DIFFERENT CLASSES ARE NOT NECESSARILY DISSIMILAR. (144.2a)

[123.2.]**123.3.** As regards signs or devices mentioned in paragraphs (j), [(k),] and (l), **OR THOSE WHERE THE SHAPES OF THE GOODS THEMSELVES OR PORTION THEREOF ARE NOT NECESSITATED BY TECHNICAL FACTORS, THEIR PACKAGING, OR CONTAINERS,** nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for **AT LEAST THREE (3)**[five (5)] years before the date on which the claim of distinctiveness is made. (a)

[123.3.]**123.4.** The nature of the goods to which the mark is applied will not constitute an obstacle to registration; (Sec. 4, R.A. No. 166a)

123.5. WITH RESPECT TO SECTIONS 123.1(E), (F), AND (N) THE DECLARATION THAT A MARK IS WELL-KNOWN MAY BE REVOKED BY A COMPETENT AUTHORITY IF THE CONDITION(S) ON WHICH THE DECLARATION WAS MADE NO LONGER EXIST(S). (n)

SECTION 48. Secs. 124 to 131 of the IP Code are hereby collectively designated as Part IV, Chapter IV, Trademark Application, as follows:

Chapter IV TRADEMARK APPLICATION

SECTION 49. Sec. 124 of the IP Code is hereby amended to read as follows:

SEC. 124. *Requirements of Application.* - 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

- (a) A request for registration;
- (b) The name and address of the applicant;
- (c) The name of a State of which the applicant is a national or where he has domicile; and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;
- [(d)] Where the applicant is a juridical entity, the law under which it is organized and existing;
- [(e)] **(D)** The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;
- [(f)] **(E)** Where the applicant claims the priority of an earlier application, an indication of:

- 1 i) The name of the State with whose national office the earlier
2 application was filed or if filed with an office other than a
3 national office, the name of that office,
4 ii) The date on which the earlier application was filed, and
5 iii) Where available, the application number of the earlier
6 application;
7 [(g)] **(F)** Where the applicant claims color as a distinctive feature of the
8 mark, a statement to that effect as well as the name or names of the
9 color or colors claimed and an indication, in respect of each color, of the
10 principal parts of the mark which are in that color;
11 [(h)] **(G)** Where the mark is a three-dimensional mark, a statement to that
12 effect;
13 [(i)] **(H)** One or more reproductions of the mark **OR SERIES OF MARKS**,
14 as prescribed in the Regulations; (a)
15 [(j)] **(I)** A transliteration or translation of the mark or of some parts of the
16 mark, as prescribed in the Regulations;
17 [(k)] **(J)** The names of the goods or services for which the registration is
18 sought, grouped according to the classes of the Nice Classification,
19 together with the number of the class of the said Classification to which
20 each group of goods or services belongs; and
21 [(l)] **(K)** A signature by, or other self-identification of, the applicant or his
22 representative.

23 124.2. The applicant **FOR REGISTRATION**[or the registrant] shall file a
24 [d] Declaration of [a]Actual [u]Use of the mark with evidence to that
25 effect, as prescribed by the Regulations within three (3) years and **SIX (6)**
26 **MONTHS** from the filing date of the application. **THE REGISTRANT**
27 **SHALL LIKEWISE FILE A DECLARATION OF ACTUAL USE WITHIN:**

- 28 **(A) THREE (3) YEARS FROM THE FILING DATE OF THE**
29 **APPLICATION;**
30 **(B) ONE (1) YEAR FROM THE FIFTH ANNIVERSARY OF THE**
31 **REGISTRATION;**
32 **(C) ONE (1) YEAR FROM DATE OF RENEWAL; AND**
33 **(D) ONE (1) YEAR FROM THE FIFTH ANNIVERSARY OF EACH**
34 **RENEWAL.**

35 Otherwise, the application shall be refused **REGISTRATION** or the
36 **REGISTERED** mark shall be removed from the Register by the Director,
37 **IN ACCORDANCE WITH THE REGULATIONS. THIS**
38 **NOTWITHSTANDING, NO REGISTRATION SHALL BE ISSUED WITHIN**
39 **ONE (1) YEAR FROM REMOVAL FROM THE REGISTER TO ANOTHER**
40 **APPLICANT FOR A MARK IDENTICAL TO THE ONE SO REMOVED. (a)**

41 **IN CASE OF NON-USE, THE APPLICANT OR REGISTRANT, WHEN**
42 **WARRANTED, SHALL INSTEAD FILE A DECLARATION OF NON-USE**
43 **INDICATING THE GROUNDS AND JUSTIFICATION THEREFOR AS**
44 **PROVIDED UNDER THE REGULATIONS. (N)**

45 124.3. One (1) application may relate to several goods and/or services,
46 whether they belong to one (1) class or to several classes of the Nice
47 Classification.

48 124.4. If during the examination of the application, the Office finds
49 factual basis to reasonably doubt the veracity of any indication or
50 element in the application, it may require the applicant to submit
51 sufficient evidence to remove the doubt. (Sec. 5, R.A. No. 166a)

52 **SECTION 50.** Sec. 127.1 of the IP Code is hereby amended to read as follows:

53 SEC. 127. *Filing Date.* - 127.1. Requirements. - The filing date of an
54 application shall be the date on which the Office received the
55 **APPLICATION FORM** with the following **INFORMATION**[indications and
56 elements in English or Filipino]:

1 [(a)] An express or implicit indication that the registration of a
2 mark is sought;
3 [(b)] **(A)** The **NAME**[identity] of the applicant;
4 [(c)] Indications sufficient to **(B)** The address and contact details of
5 the applicant or his representative, if any;
6 [(d)] **(C)** A reproduction of the mark to be registered [whose
7 registration is sought; and]
8 [(e)] **(D)** The list of the goods or services covered by the mark [for
9 which the registration is sought.]

10
11 **SECTION 51.** Sec. 130 of the IP Code is hereby amended to read as follows:

12 SEC. 130. Signature and Other Means of Self-Identification. - 130.1.
13 Where a signature is required, the Office shall accept:

- 14 (a) A hand-written signature; or
15 (b) The use of other forms of signature, such as **an ELECTRONIC**,
16 printed or stamped signature, or the use of a seal, instead of a
17 hand-written signature: Provided, That where a seal is used, it
18 should be accompanied by an indication in letters of the name of
19 the signatory.

20 130.2. The Office shall accept communications to it [by telecopier, or] by
21 electronic means **OR THE LATEST TECHNOLOGIES** subject to the
22 conditions or requirements that will be prescribed by the Regulations.
23 [When communications are made by telefacsimile, the reproduction of
24 the signature, or the reproduction of the seal together with, where
25 required, the indication in letters of the name of the natural person
26 whose seal is used, appears. The original communications must be
27 received by the Office within thirty (30) days from date of receipt of the
28 telefacsimile.]

29 130.3. No attestation, notarization, authentication, legalization or other
30 certification of any signature or other means of self-identification referred
31 to in the preceding paragraphs, will be required, except, where the
32 signature concerns the surrender of a registration. (n)

33
34 **SECTION 52.** Sec. 131 of the IP Code is hereby amended to read as follows:

35 SEC. 131. Priority Right. - 131.1. An application for registration of a
36 mark filed in the Philippines by a person referred to in Section 3, and
37 who previously duly filed an application for registration of the same mark
38 in one of those countries, shall be considered as filed as of the day the
39 application was first filed in the foreign country; **PROVIDED, THAT, THE**
40 **APPLICATION IN THE PHILIPPINES IS FILED WITHIN SIX MONTHS**
41 **FROM THE DATE ON WHICH THE APPLICATION WAS FIRST FILED**
42 **IN THE FOREIGN COUNTRY.**

43 [131.2. No registration of a mark in the Philippines by a person described
44 in this section shall be granted until such mark has been registered in
45 the country of origin of the applicant.]

46 **131.2[131.3.]** Nothing in this section shall entitle the owner of a
47 registration granted under this section to sue for acts committed prior to
48 the date on which his mark was registered in this country: Provided,
49 That, notwithstanding the foregoing, the owner of a well-known mark as
50 defined in Section 123.1(e) of this Act, that is not registered in the
51 Philippines, may, against an identical or confusingly similar mark,
52 oppose its registration, or petition the cancellation of its registration or
53 sue for unfair competition, without prejudice to availing himself of other
54 remedies provided for under the law. (131.3)

1 **131.3**[131.4.] In like manner and subject to the same conditions and
2 requirements, the right provided in this section may be based upon a
3 subsequent regularly filed application in the same foreign country:
4 Provided, That any foreign application filed prior to such subsequent
5 application has been withdrawn, abandoned, or otherwise disposed of,
6 without having been laid open to public inspection and without leaving
7 any rights outstanding, and has not served, nor thereafter shall serve, as
8 a basis for claiming a right of priority. (131.4) (Sec. 37, R.A. No. 166a)

9 **SECTION 53.** Secs. 132 to 145 of the IP Code are hereby collectively designated
10 under Part IV, Chapter V, Procedure for Registration of Trademark, as follows:

11 **CHAPTER V**
12 **PROCEDURE FOR REGISTRATION OF TRADEMARK**

13
14 **SECTION 54.** Sec. 132.2. of the IP Code is hereby deleted.

15 **SECTION 55.** Sec. 136 of the IP Code is hereby amended to read as follows:

16 SEC. 136. *Issuance and Publication of Certificate.* - When the period for
17 filing the opposition **AS PROVIDED IN THE PRECEDING SECTIONS** has
18 expired, [or when the Director of Legal Affairs shall have denied the
19 opposition,] the Office, upon payment **BY THE APPLICANT** of the
20 required fee, shall issue the certificate of registration. Upon issuance of
21 **THE** a certificate [of registration,] **THE REGISTERED MARK** [notice
22 thereof making reference to the publication of the application] shall be
23 published in the IPO Gazette. (a) (Sec. 10, R.A. No. 165)

24
25 **SECTION 56.** Sec. 138 of the IP Code is hereby amended to read as follows:

26 SEC. 138. *Certificates of Registration.* - A certificate of registration of a
27 mark shall be prima facie evidence of the validity of the registration, the
28 registrant's ownership of the mark, and of the registrant's exclusive right
29 to use the same in connection with the goods or services **SPECIFIED IN**
30 **THE CERTIFICATE** and those that are related thereto [specified in the
31 certificate.] (Sec. 20, R.A. No. 165)

32 **SECTION 57.** Secs. 141 to 142 of the IP Code is hereby amended to read as
33 follows:

34 SEC. 141. *Sealed and Certified Copies as Evidence.* - Copies of any
35 records, books, papers, or drawings belonging to the Office relating to
36 marks, and copies of registrations, when authenticated by the seal of the
37 Office and certified [by the Director of the Administrative, Financial and
38 Human Resource Development Service Bureau or in his name] by [an]**A**
39 **DULY AUTHORIZED** employee of the Office [~~duly authorized by said~~
40 ~~Director~~], shall be evidence in all cases wherein the originals would be
41 evidence; and any person who applies and pays the prescribed fee shall
42 secure such copies. (n)

43 SEC. 142. *Correction of Mistakes Made by the Office.* - Whenever a
44 material mistake in a registration incurred through the fault of the Office
45 is clearly disclosed by the records of the Office, a certificate stating the
46 fact and nature of such mistake shall be issued without charge, recorded
47 and a printed copy thereof shall be attached to each printed copy of the
48 registration. Such corrected registration shall thereafter have the same
49 effect as the original certificate; or in the discretion of the [Director of the
50 Administrative, Financial and Human Resource Development Service
51 Bureau]**OFFICE**, a new certificate of registration may be issued without
52 charge. All certificates of correction heretofore issued in accordance with
53 the Regulations and the registration to which they are attached shall
54 have the same force and effect as if such certificates and their issuance
55 had been authorized by this Act. (n)

SECTION 58. Sec. 144 of the IP Code is hereby amended to read as follows:

SEC. 144. *Classification of Goods and Services.* - [144.1.] Each registration, and any publication of the Office which concerns an application or registration effected by the Office shall indicate the goods or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs, presented in the order of the classes of the said Classification. (Sec. 6, R.A. No. 166a)

[144.2. Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.]

SECTION 59. Sec. 145 of the IP Code is hereby amended to read as follows:

SEC. 145. *Duration.* - A certificate of registration shall remain in force for ten (10) years **FROM THE DATE OF REGISTRATION.**[: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office.](a) (Sec. 12, R.A. No. 166a)

SECTION 60. Sec. 146 of the IP Code is hereby designated under Part IV, Chapter VI, Procedure for Renewal of Trademark Registration and is amended to read as follows:

Chapter VI

PROCEDURE FOR RENEWAL OF TRADEMARK REGISTRATION

SEC. 146. *Renewal.* - 146.1. A certificate of registration may be renewed for periods of ten (10) years at its expiration upon payment of the prescribed fee and upon filing of a request. The request shall contain the following indications:

- (a) An indication that renewal is sought;
- (b) The name and address of the registrant or his successor-in-interest, hereafter referred to as the "right holder";
- (c) The registration number of the registration concerned;
- (d) The filing date of the application which resulted in the registration concerned to be renewed;
- (e) Where the right holder has a representative, the name and address of that representative;
- (f) The names of the recorded goods or services for which the renewal is requested or the names of the recorded goods or services for which the renewal is not requested, grouped according to the classes of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification; and
- (g) A signature by the right holder or his representative.

146.2. Such request shall be in Filipino or English and may be made at any time within six (6) months before the expiration of the period for which the registration was issued or renewed, or it may be made within

1 six (6) months after such expiration on payment of the additional fee
2 herein prescribed.

3 146.3. If the Office refuses to renew the registration, it shall notify the
4 registrant of his refusal and the reasons therefor.

5 146.4. An applicant for renewal not domiciled in the Philippines shall be
6 subject to and comply with the requirements of this Act. (Sec. 15, R.A.
7 No. 166a)

8 **146.5. DECLARATIONS OF ACTUAL USE SHALL BE FILED WITHIN**
9 **THE PERIODS PRESCRIBED IN SEC. 124.2 FOR RENEWED**
10 **TRADEMARK REGISTRATIONS.**

11
12 **SECTION 61.** Secs. 147 to 148 of the IP Code are hereby collectively
13 designated under Part IV, Chapter VII, Rights of Registrants with Sec. 147.2
14 amended to read as follows:

15 **Chapter VII**

16 **RIGHTS OF REGISTRANTS**

17 x x x

18 147.2. The exclusive right of the owner of a well-known mark
19 defined in Subsection 123.1(e) [which is registered in the
20 Philippines,] shall extend to goods and services which are not
21 similar to those in respect of which the mark is registered:
22 Provided, That use of that mark in relation to those goods or
23 services would indicate a connection between those goods or
24 services and the owner of the registered mark: Provided further,
25 That the interests of the owner of the registered mark are likely to
26 be damaged by such use. (n)

27 x x x

28
29 **SECTION 62.** Secs. 149 to 150 of the IP Code are hereby collectively designated
30 under Part IV, Chapter VIII, Assignment and Transmission of Trademark Rights:

31
32 **Chapter VIII**

33 **ASSIGNMENT AND TRANSMISSION OF TRADEMARK RIGHTS**

34
35 **SECTION 63.** Secs. 151 to 154 of the IP Code are hereby collectively designated
36 under Part IV, Chapter IX, Cancellation of Trademarks:

37
38 **Chapter IX**

39 **CANCELLATION OF TRADEMARKS**

40
41 **SECTION 64.** Sec. 155 of the IP Code is hereby collectively designated under
42 Part IV, Chapter X, Infringement of Trademark Rights and is hereby amended to read
43 as follows:

44 **Chapter X**

INFRINGEMENT OF TRADEMARK RIGHTS

SEC. 155. [Remedies;] Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; ~~or~~

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material; ~~OR~~ (Sec. 22, R.A. No 166a)

155.3. BENEFIT DIRECTLY OR INDIRECTLY FROM THE INFRINGING ACTIVITY OF ANOTHER PERSON WHO COMMITS AN INFRINGEMENT IN A COMMERCIAL SCALE, PROVIDED THAT THE PERSON BENEFITING HAS BEEN GIVEN NOTICE OF THE INFRINGING ACTIVITY AND HAS THE RIGHT AND ABILITY TO CONTROL THE ACTIVITIES OF THE OTHER PERSON. THIS APPLIES ONLY IN CASES INVOLVING COUNTERFEIT TRADEMARK GOODS.

IF, UPON OBTAINING SUCH NOTICE OF THE INFRINGING ACTIVITY, ONE ACTS EXPEDITIOUSLY TO REMOVE, OR DISABLE ACCESS TO, THE MATERIAL, HE SHALL NOT BE LIABLE FOR EITHER INFRINGEMENT OR DAMAGES IF THERE BE NO INFRINGEMENT FOUND. (n)

SECTION 65. Secs. 156 to 164 of the IP Code are collectively designated under Part IV, Chapter XI, Remedies, with Secs. 157, 158, and 160 to 164 hereby removed from Part II and are consolidated with other provisions, or later restored with modifications in a new Part VI below, and the remaining provisions of this Chapter are accordingly renumbered, as follows:

CHAPTER XI REMEDIES

SEC. 156. [*Actions, and Damages and Injunction for Infringement*]**REMEDIES** - 156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, **INCLUDING ADVERTISING REVENUES**, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name

1 was used in the infringement of the rights of the complaining party. (a)
2 (Sec. 23, first par., R.A. No. 166a)

3 156.2. On application of the complainant, the court may impound during
4 the pendency of the action, sales invoices and other documents
5 evidencing sales. (n)

6 156.3. In cases where actual intent to mislead the public or to defraud
7 the complainant is shown, in the discretion of the court, the damages
8 may be doubled. (Sec. 23, first par., R.A. No. 166)

9 156.4. The complainant, upon proper showing, may also be granted
10 injunction. (Sec. 23, second par., R.A. No. 166a)

11 [SEC. 157. *Power of Court to Order Infringing Material Destroyed.* - 157.1.
12 In any action arising under this Act, in which a violation of any right of
13 the owner of the registered mark is established, the court may order that
14 goods found to be infringing be, without compensation of any sort,
15 disposed of outside the channels of commerce in such a manner as to
16 avoid any harm caused to the right holder, or destroyed; and all labels,
17 signs, prints, packages, wrappers, receptacles and advertisements in the
18 possession of the defendant, bearing the registered mark or trade name
19 or any reproduction, counterfeit, copy or colorable imitation thereof, all
20 plates, molds, matrices and other means of making the same, shall be
21 delivered up and destroyed.]

22 [157.2. In regard to counterfeit goods, the simple removal of the
23 trademark affixed shall not be sufficient other than in exceptional cases
24 which shall be determined by the Regulations, to permit the release of
25 the goods into the channels of commerce. (Sec. 24, R.A. No. 166a)]

26 [SEC. 158. *Damages; Requirement of Notice.* - In any suit for
27 infringement, the owner of the registered mark shall not be entitled to
28 recover profits or damages unless the acts have been committed with
29 knowledge that such imitation is likely to cause confusion, or to cause
30 mistake, or to deceive. Such knowledge is presumed if the registrant
31 gives notice that his mark is registered by displaying with the mark the
32 words "Registered Mark" or the letter R within a circle or if the defendant
33 had otherwise actual notice of the registration. (Sec. 21, R.A. No. 166a)]

34 SEC. [159.]157. *Limitations to Actions for TRADEMARK Infringement.* -
35 Notwithstanding any other provision of this Act, the remedies given to
36 the owner of a right infringed under this Act shall be limited as follows:

37 [159.1.]157.1. Notwithstanding the provisions of Section 155 hereof, a
38 registered mark shall have no effect against any person who, in good
39 faith, before the filing date or the priority date, was using the mark for
40 the purposes of his business or enterprise: Provided, That his right may
41 only be transferred or assigned together with his enterprise or business
42 or with that part of his enterprise or business in which the mark is used.

43 [159.2.]157.2. Where an infringer who is engaged solely in the business
44 of printing the mark or other infringing materials for others is an
45 innocent infringer, the owner of the right infringed shall be entitled as
46 against such infringer only to an injunction against future printing.

47 [159.3.]157.3. Where the infringement complained of is contained in or
48 is part of paid advertisement in a newspaper, magazine, or other similar
49 periodical or in an electronic communication, the remedies of the owner
50 of the right infringed as against the publisher or distributor of such
51 newspaper, magazine, or other similar periodical or electronic
52 communication shall be limited to an injunction against the presentation
53 of such advertising matter in future issues of such newspapers,
54 magazines, or other similar periodicals or in future transmissions of such
55 electronic communications. The limitations of this subparagraph shall
56 apply only to innocent infringers: Provided, That such injunctive relief

shall not be available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter where restraining the dissemination of such infringing matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication is customarily conducted in accordance with the sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter; and

[159.4.]**157.4.** There shall be no infringement of trademarks or trade names of imported or sold drugs and medicines allowed under Section 72.1 of this Act, as well as imported or sold off-patent drugs and medicines: Provided, That said drugs and medicines bear the registered marks that have not been tampered, unlawfully modified, or infringed upon as defined under Section 155 of this Code. (159.4)

[SEC. 160. *Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action.* - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R.A. No. 166a)]

[SEC. 161. *Authority to Determine Right to Registration.* - In any action involving a registered mark, the court may determine the right to registration, order the cancellation of a registration, in whole or in part, and otherwise rectify the register with respect to the registration of any party to the action in the exercise of this. Judgment and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Bureau, and shall be controlled thereby. (Sec. 25, R.A. No. 166a)]

[SEC. 162. *Action for False or Fraudulent Declaration.* - Any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (Sec. 26, R.A. No. 166)]

[SEC. 163. *Jurisdiction of Court.* - All actions under Sections 150, 155, 164, and 166 to 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws. (Sec. 27, R.A. No. 166)]

[SEC. 164. *Notice of Filing Suit Given to the Director.* - It shall be the duty of the clerks of such courts within one (1) month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this Act, to notify the Director in writing setting forth: the names and addresses of the litigants and designating the number of the registration or registrations and within one (1) month after the judgment is entered or an appeal is taken, the clerk of court shall give notice thereof to the Office, and the latter shall endorse the same upon the filewrapper of the said registration or registrations and incorporate the same as a part of the contents of said filewrapper. (164)]

SECTION 66. Secs. 165 to 166 of the IP Code are hereby collectively designated under Part IV, Chapter XII, Trade Names or Business Names, with Sec. 165 split into five new sections and are amended and renumbered to read as follows:

Chapter XII

TRADE NAMES OR BUSINESS NAMES

SEC. [165.]**158.** *Trade Names or Business Names.* – [165.1.] A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name. (165.1)

SEC. 159. PROTECTION OF TRADE NAMES AGAINST UNLAWFUL ACTS. [-165.2.] (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful. (165.2)

SEC. 160. REMEDIES. –[165.3.] The remedies provided for in Sections 153 to 156 and Sections 166**162** and [167]**CHAPTER XIII** shall apply mutatis mutandis. (165.3a)

SEC. 161. ASSIGNMENT AND TRANSFER OF OWNERSHIP OF TRADE NAMES. – [165.4.] Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name. The provisions of Subsections 149.2 to 149.4 shall apply mutatis mutandis. (165.4)

SEC. [166.]**162.** *Goods Bearing Infringing Marks or Trade Names.* - No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act, or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, shall be admitted to entry at any customhouse of the Philippines. In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (166) (Sec. 35, R.A. No. 166)

SECTION 67. Sec. 167 of the IP Code is hereby designated under Part IV, Chapter XIII, Collective Marks and Certification Marks, with Sec. 165 split into four new sections and are amended and renumbered to read as follows:

CHAPTER XIII

COLLECTIVE MARKS AND CERTIFICATION MARKS

SEC. [167.]**163.** *Collective Marks AND CERTIFICATION MARKS.* – [167.1.] Subject to S[ub]sections [167.2]**165** and [167.3]**166**, **Chapters II to XI of Part IV**[Sections 122 to 164 and 166] shall apply to collective marks, except that references therein to "mark" shall be read as "collective mark" **OR "CERTIFICATION MARK"**. (167.1a)

SEC. 164. REGISTRATION OF COLLECTIVE MARKS OR CERTIFICATION MARKS. – [167.2.](a) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the agreement, if any, governing the use of the collective mark. **AN APPLICATION FOR REGISTRATION OF A CERTIFICATION MARK SHALL DESIGNATE THE MARK AS A CERTIFICATION MARK AND SHALL BE ACCOMPANIED BY A COPY OF THE STANDARDS SET BY THE CERTIFIER GOVERNING THE USE OF THE CERTIFICATION MARK.** (167.2(a)a)

SEC. 165. DUTY TO NOTIFY OF CHANGES IN AGREEMENT OR STANDARDS. [-(b)] The registered owner of a collective mark **OR A CERTIFICATION MARK** shall notify the Director of any changes made in respect of the agreement or standards referred to in paragraph (a). (167.2.(b)a)

SEC. 166.CANCELLATION OF COLLECTIVE MARKS OR CERTIFICATION MARKS. – [167.3.] In addition to the grounds provided in Section 151[149], the Court shall cancel the registration of a collective mark **OR REGISTRATION MARK** if the person requesting the cancellation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the agreements referred to in Subsection 165 [166.2] or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned. (67.3a)

SEC. 167. PROHIBITION AGAINST LICENSING OF COLLECTIVE MARKS OR CERTIFICATION MARKS. – [167.4.] The registration of a collective **OR CERTIFICATION** mark, or an application therefor shall not be the subject of a license contract. (167.4a) (Sec. 40, R.A. No. 166a)

SECTION 68. Secs. 168 to 169 of the IP Code is hereby designated under Part IV, Chapter XIV, Protection Against Unfair Competition, False Designations of Origin, and False Description or Representation, with Secs. 168.4 and 169.2 absorbed and moved to Sec. 170 of the Code, the amendment being as follows:

Chapter XIV.

PROTECTION AGAINST UNFAIR COMPETITION, FALSE DESIGNATIONS OF ORIGIN, AND FALSE DESCRIPTION OR REPRESENTATION

SEC. 168. Unfair Competition, Rights, Regulation and Remedies. - 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to

believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

[168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*. (Sec. 29, R.A. No. 166a)]

SEC. 169. *False Designations of Origin; False Description or Representation.* - 169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable **UNDER THIS SECTION AND SHALL BE SUBJECT TO AN ACTION THEREFOR.**[to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.]

[169.2. Any goods marked or labeled in contravention of the provisions of this Section shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R.A. No. 166a)]

SECTION 69. A new Sec. 170 is inserted in Part IV, Chapter XIII, as follows:

SEC. 170. REMEDIES. - ANY PERSON WHO BELIEVES THAT HE OR SHE IS OR LIKELY TO BE DAMAGED BY THE ACTS IN THIS CHAPTER MAY INSTITUTE A CIVIL ACTION FOR DAMAGES AND INJUNCTION PROVIDED IN SECTIONS 156 AND 157, WHICH APPLY *MUTATIS MUTANDIS*. (168.6,169.1(b)) (Sec. 29, R.A. No. 166a).

SECTION 70. Part IV of the IP Code (The Law on Copyright), comprising Secs. 171 to 224, is hereby designated as Part V and amended to read as follows:

PART V[IV].

[THE LAW ON] COPYRIGHT AND RELATED RIGHTS

SECTION 71. Section 171 of the IP Code is hereby amended to read as follows:

Chapter I
PRELIMINARY PROVISIONS

SEC. 171. Definitions. - For the purpose of this Act, the following terms have the following meaning:

171.1. "COPYRIGHT" REFERS TO THE BUNDLE OF EXCLUSIVE ECONOMIC RIGHTS GRANTED BY LAW TO AN AUTHOR AND SUBJECT TO CERTAIN LIMITATIONS; (n)

171.2. "MORAL RIGHTS" REFERS TO THE BUNDLE OF EXCLUSIVE RIGHTS WHICH ALLOW AUTHORS AND CREATORS TO PRESERVE AND PROTECT THEIR PERSONAL LINK WITH THEIR WORK. (n)

171.3.[171.1.] "Author" is the natural person who has created the work; (171.1)

171.4. A "COLLECTIVE MANAGEMENT ORGANIZATION" IS A NON-STOCK, NON-PROFIT ORGANIZATION, LOCAL OR FOREIGN, WHICH HAS FOR ITS SOLE AND PRINCIPAL PURPOSE THE EXERCISE OF COPYRIGHT OR RELATED RIGHTS ON BEHALF OF MORE THAN ONE RIGHT HOLDER, FOR THE COLLECTIVE BENEFIT OF THE SAID RIGHT HOLDERS; (n)

171.5.[171.2.] A "collective work" is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified; (171.2)

171.6. [171.3.] "Communication to the public" or "communicate to the public" means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them; (171.3)

171.7.[171.4.] A "computer" is an electronic or similar device having information-processing capabilities, and a "computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result; (171.4)

171.8.[171.5.] "Public lending" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive; (171.5)

171.9.[171.6.] "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection **171.6**[171.3]; (171.6)

1 **171.10.**[171.7] "Published works" means works, which, with the consent
2 of the authors, are made available to the public by wire or wireless
3 means in such a way that members of the public may access these works
4 from a place and time individually chosen by them: Provided, That
5 availability of such copies has been such, as to satisfy the reasonable
6 requirements of the public, having regard to the nature of the work;
7 (171.7)

8 **171.11.**[171.8.] "Rental" is the transfer of the possession of the original
9 or a copy of a work or a sound recording for a limited period of time, for
10 profit-making purposes; (171.8)

11 **171.12.**[171.9.] "Reproduction" is the making of one (1) or more copies,
12 temporary or permanent, in whole or in part, of a work or a sound
13 recording in any manner or form without prejudice to the provisions of
14 Section 185 of this Act (171.9) (Sec. 41 [E], P.D. No. 49a);

15 **171.13.**[171.10.] A "work of applied art" is an artistic creation with
16 utilitarian functions or incorporated in a useful article, whether made by
17 hand or produced on an industrial scale; (171.10)

18 **171.14.**[171.11.] A "work of the Government of the Philippines" is a work
19 created by an officer or employee of the Philippine Government or any of
20 its subdivisions and instrumentalities, including government-owned or
21 controlled corporations as part of his regularly prescribed official duties.
22 (171.11)

23 **171.15.**[171.12.] "Technological measure" means any technology, device
24 or component that, in the normal course of its operation, restricts acts in
25 respect of a work, performance or sound recording, which are not
26 authorized by the authors, performers or producers of sound recordings
27 concerned or permitted by law; (171.12)

28 **171.16.**[171.13.] "Rights management information" means information
29 which identifies the work, sound recording or performance; the author of
30 the work, producer of the sound recording or performer of the
31 performance; the owner of any right in the work, sound recording or
32 performance; or information about the terms and conditions of the use of
33 the work, sound recording or performance; and any number or code that
34 represent such information, when any of these items is attached to a
35 copy of the work, sound recording or fixation of performance or appears
36 in conjunction with the communication to the public of a work, sound
37 recording or performance. (171.13)

38 **SECTION 72.** Sec. 172 of the IP Code is hereby amended to read as follows:

39 SEC. 172. Literary and Artistic Works. - 172.1 Literary and artistic
40 works, hereinafter referred to as "works", are original intellectual
41 creations in the literary and artistic domain protected from the moment
42 of their creation. **BY ORIGINALITY IS MEANT THAT THE WORK WAS**
43 **CREATED BY THE AUTHOR THROUGH HIS OWN SKILL, LABOR AND**
44 **JUDGMENT, WITHOUT DIRECTLY COPYING OR EVASIVELY**
45 **IMITATING THE WORK OF ANOTHER,** and shall include in particular:
46 x x x

47 172.2. Works are protected by the sole fact of their creation, irrespective
48 of their mode, **MEDIUM,** or form of expression, as well as of their
49 content, quality and purpose, **AND WITHOUT NEED FOR ANY**
50 **FORMALITY. REGISTRATION IS NOT REQUIRED FOR COPYRIGHT**
51 **PROTECTION.** (172a) (Sec. 2, P.D. No. 49a)

52 **SECTION 73.** Sec. 175 of the IP Code is hereby amended to read as follows:

53 Chapter IV
54 WORKS NOT PROTECTED

SEC. 175. Unprotected Subject Matter. - Notwithstanding the provisions of Section 172 and 173, no protection shall extend, under this law, to any **OF THE FOLLOWING:**

a) **ANY** idea, procedure, system, method **OF** [or] operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof;

B) THE DESIGN OF AN ARTICLE OF MANUFACTURE OR WORK OF APPLIED ART THAT IS FUNCTIONAL IN NATURE AND CANNOT BE IDENTIFIED SEPARATELY FROM, OR EXIST INDEPENDENTLY OF, THE UTILITARIAN ASPECTS OF SUCH ARTICLE. (175a)

SECTION 74. Sec. 178.4 of the IP Code is hereby amended to read as follows:

178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary; (a)

SECTION 75. Sec. 183 of the IP Code is hereby amended to read as follows:

SEC 183. **COLLECTIVE MANAGEMENT ORGANIZATIONS.**[Designation of Society.] -

183.1. Designation of CMO. - The owners of copyright and related rights or their heirs may designate a **COLLECTIVE MANAGEMENT ORGANIZATION (CMO)**[society] of artists, writers, composers and other right-holders to collectively **EXERCISE**[manage their] economic [or moral] rights on their behalf. (183a)

183.2. Mandatory Accreditation with the IPO.- For the said **ORGANIZATIONS** [societies] to enforce the rights of their members, they shall first secure the necessary accreditation from the Intellectual Property Office. **BOTH LOCAL AND FOREIGN CMOS AND INDIVIDUALS OR ENTITIES ENGAGING IN ANY OF THE ACTIVITIES IN SEC. 183.3 IN BEHALF OF MORE THAN ONE RIGHT HOLDER ARE REQUIRED TO APPLY FOR ACCREDITATION. PARENTS IN RELATION TO THEIR MINOR CHILDREN OR OTHER PERSONS EXERCISING GUARDIANSHIP OVER THEIR WARDS ARE NOT REQUIRED TO APPLY FOR ACCREDITATION.**

ANY PERSON MAY REFUSE THE PAYMENT OR REMITTANCE OF ROYALTIES TO A CMO WHICH IS NOT ACCREDITED. IN ADDITION, ANY SUCH ORGANIZATION FOUND FUNCTIONING AS A CMO WITHOUT SAID ACCREDITATION AFTER DUE NOTICE AND HEARING SHALL BE LIABLE FOR A REASONABLE FINE IN NO CASE LESS THAN P20,000.00. (183a) (Sec. 32, P.D. No. 49a)

183.3. EFFECT OF ACCREDITATION. - ACCREDITATION SHALL AUTHORIZE A CMO TO PERFORM ANY OR ALL OF THE FOLLOWING:

a) **NEGOTIATION WITH AND GRANT OF LICENSES TO USERS IN RESPECT OF THE RIGHTS AND USES THAT THE COLLECTIVE MANAGEMENT ORGANIZATION IS MANDATED BY ITS MEMBERS TO MANAGE, WHICH INCLUDES THE USAGE OR EXPLOITATION OF COPYRIGHTED WORKS IN PHILIPPINE TERRITORY BY DIGITAL MUSIC SERVICES, CONCERT PRODUCERS, CABLE COMPANIES AND OTHER SIMILAR USERS;**

- b) **COLLECTION OF ROYALTIES AND OTHER FORMS OF REMUNERATION FOR THE LICENSE OF RIGHTS WHICH THE COLLECTIVE MANAGEMENT ORGANIZATION MANAGES FOR ITS MEMBERS;**
- c) **COLLECTION OF PROCEEDS IN SUBSEQUENT TRANSFERS OF THE ORIGINALS OF PAINTINGS, SCULPTURES, AND MANUSCRIPTS IN RELATION TO CHAPTER XI OF PART V OF THIS ACT;**
- d) **COLLECTION OF ADDITIONAL REMUNERATION FOR SUBSEQUENT COMMUNICATION OR BROADCAST OF A PERFORMANCE;**
- e) **COLLECTION OF SINGLE EQUITABLE REMUNERATION FOR THE BROADCAST, OTHER COMMUNICATION TO THE PUBLIC, OR PUBLIC PERFORMANCE OF A SOUND RECORDING OR OF AN AUDIOVISUAL FIXATION IN RELATION TO SECTION 209; AND/OR**
- f) **DISTRIBUTION OF THE ABOVE-MENTIONED COLLECTIONS TO THE RIGHTS HOLDERS. (N)**

183.4. POSTHUMOUS ENFORCEMENT OF MORAL RIGHTS. - A DULY-ACCREDITED CMO MAY ENFORCE THE MORAL RIGHTS OF ITS DECEASED MEMBERS, WHEN NAMED IN A WRITTEN INSTRUMENT WHICH SHALL BE FILED WITH THE NATIONAL LIBRARY, AS PROVIDED IN SECTION 199. (Cf. 198.1a)

SECTION 76. Sec. 184.1(l) of the IP Code is hereby amended to read as follows:

(l) The reproduction, ~~or~~ distribution **AND MAKING AVAILABLE TO THE PUBLIC OF WORKS IN AN ACCESSIBLE FORMAT COPY FOR** of published articles or materials in a specialized format exclusively for the use of the blind, ~~OR~~ visually [- and reading-] impaired [persons] **AND THOSE 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. THESE LIMITATIONS ON COPYRIGHT COVER THE CHANGES NEEDED TO MAKE THE WORK IN ACCESSIBLE FORMAT COPIES FOR THE AFOREMENTIONED BENEFICIARIES:** Provided, That such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication. (a)

(M) LIMITATIONS AS MAY BE PROVIDED IN IMPLEMENTING RULES AND REGULATIONS.

SECTION 77. Sec. 188 of the IP Code is hereby amended to read as follows:

SEC. 188. [*Reprographic*] *Reproduction by Libraries* - 188.1. Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate; [by reprographic reproduction]:

SECTION 78. Sec. 190 of the IP Code is transferred to the new Part VI of the IP Code.

SEC. 190. *Importation and Exportation of Infringing Materials.* - Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part ~~VIV~~ of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)

SECTION 79. Sec. 191 of the IP Code becomes Sec. 190 under Part V, Chapter IX, Deposit and Recordation, and is hereby amended to read as follows:

CHAPTER IX

Deposit and [Notice]**RECORDATION**

SEC. [191.]**190.***Deposit AND RECORDATION [and Notice of Deposit]-with the National Library and the Supreme Court Library. -*

190.1. THE DEPOSIT AND RECORDATION OF A WORK, AS PROVIDED IN THIS SECTION, ARE NOT CONDITIONS FOR COPYRIGHT PROTECTION AND ARE MERELY FOR THE PURPOSE OF COMPLETING THE RECORDS OF THE NATIONAL LIBRARY AND THE SUPREME COURT LIBRARY.

190.2. At any time during the subsistence of the copyright, the owner of the copyright or of any exclusive right in the work may, [for the purpose of completing the records of the National Library and the Supreme Court Library, register and] deposit with [them,]-**THE NATIONAL LIBRARY AND THE SUPREME COURT LIBRARY** by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the Directors of the said libraries may prescribe in accordance with regulations: Provided, That only works in the field of law shall be deposited with the Supreme Court Library. [Such registration and deposit is not a condition of copyright protection.] (a)

190.3 THE AFOREMENTIONED LIBRARIES MAY DEPUTIZE THE INTELLECTUAL PROPERTY OFFICE TO RECEIVE DEPOSITS AND ISSUE CERTIFICATES OF DEPOSIT AND RECORDATION IN THEIR BEHALF. (N)

190.4. SUCH RECORDATION AND DEPOSIT OF A WORK WITH THE NATIONAL LIBRARY, SUPREME COURT LIBRARY, OR THE INTELLECTUAL PROPERTY OFFICE SHALL NOT CARRY WITH IT THE PRESUMPTION OF OWNERSHIP OF THE COPYRIGHT BY THE REGISTRANT OR DEPOSITOR, NOR SHALL IT BE CONSIDERED A CONDITION SINE QUA NON TO A CLAIM OF COPYRIGHT INFRINGEMENT.

SECTION 80. A new Sec. 191 is hereby inserted in the IP Code as follows:

SEC. 191. CANCELLATION OF CERTIFICATE OF DEPOSIT AND RECORDATION. - 191.1. A CERTIFICATE OF DEPOSIT AND RECORDATION SHALL BE CANCELLED BY THE GOVERNMENT AGENCY THAT ISSUED THE SAME BY VIRTUE OF FINAL ORDER OR DECISION OF THE DIRECTOR OF LEGAL AFFAIRS, DIRECTOR OF COPYRIGHT, OR DIRECTOR GENERAL OF THE IPO, OR OF THE APPROPRIATE COURT, PURSUANT TO WHICH A NEW CERTIFICATE MAY BE ISSUED.

191.2. UPON SUBMISSION OF ANY INSTRUMENT OR DEED TRANSFERRING, ASSIGNING, OR CONVEYING THE COPYRIGHT OWNERSHIP, THE EXISTING CERTIFICATE SHALL BE CANCELLED AND A NEW ONE ISSUED.

SECTION 81. Sec. 192 of the IP Code is transferred to the new Part VI of this Code. Section 193 becomes Sec. 192, and Sec. 194 is further renumbered to Sec. 195.

SECTION 82. The current Sec. 195 of the IP Code is hereby renumbered to become Sec. 193, and is hereby amended to read as follows:

SEC. [195.]**193. WAIVABILITY**[*Waiver*] *of Moral Rights.* - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

- 1 (A) [195.1.] To use the name of the author, or the title of his work, or
2 otherwise to make use of his reputation with respect to any
3 version or adaptation of his work which, because of alterations
4 therein, would substantially tend to injure the literary or artistic
5 reputation of another said author; or (a)
6 (B) [195.2.] To use the name of the author with respect to a work he
7 did not create. (Sec. 36, P.D. No. 49)

8
9 **SECTION 83.** A new Sec. 194 is hereby introduced to the IP Code to read as
10 follows:

11 **SEC. 194. NON-TRANSFERABILITY OF MORAL RIGHTS. - MORAL**
12 **RIGHTS SHALL NOT BE ASSIGNABLE OR SUBJECT TO LICENSE.**
13 (198.1)

14
15 **SECTION 84.** Sec. 198 of the IP Code is hereby amended to read as follows:

16 SEC. 198. *Term of Moral Rights.* - [198.1.] The rights of an author
17 **UNDER THIS CHAPTER** [under Section 193.1. shall last during the
18 lifetime of the author and in perpetuity after his death while the rights
19 under Sections 193.2. 193.3. and 193.4 shall be coterminous with the
20 economic rights., the moral rights shall not be assignable or subject to
21 license. The person or persons to be charged with the posthumous
22 enforcement of these rights shall be named in a written instrument
23 which shall be filed with the National Library. In default of such person
24 or persons, such enforcement shall devolve upon either the author's
25 heirs, and in default of the heirs, the Director of the National Library.]

26 [198.2. For purposes of this Section, "Person" shall mean any individual,
27 partnership, corporation, association, or society. The Director of the
28 National Library may prescribe reasonable fees to be charged for his
29 services in the application of provisions of this Section. (Sec. 39, P.D. No.
30 49) (a)]

31
32 **SECTION 85.** Sec. 199 of the IP Code is hereby amended to read as follows:

33 SEC. 199. Enforcement Remedies. -

34 **199.1. WHO MAY ENFORCE. -**

- 35 a) **DURING HIS LIFETIME, ONLY THE AUTHOR MAY SEEK**
36 **ENFORCEMENT OF HIS MORAL RIGHTS. (n)**
37 b) **IN RESPECT OF THE ENFORCEMENT OF MORAL RIGHTS**
38 **AFTER THE AUTHOR'S DEATH AND DURING THE**
39 **SUBSISTENCE OF THE SAME, THE PERSON OR PERSONS TO**
40 **BE CHARGED WITH THE POSTHUMOUS ENFORCEMENT OF**
41 **THESE RIGHTS SHALL BE NAMED IN A WRITTEN**
42 **INSTRUMENT WHICH SHALL BE FILED WITH THE NATIONAL**
43 **LIBRARY.**

44 **FOR PURPOSES OF THIS SECTION, "PERSON" SHALL MEAN**
45 **ANY INDIVIDUAL, PARTNERSHIP, CORPORATION,**
46 **ASSOCIATION, OR COLLECTIVE MANAGEMENT**
47 **ORGANIZATION. THE DIRECTOR OF THE NATIONAL LIBRARY**
48 **MAY PRESCRIBE REASONABLE FEES TO BE CHARGED FOR**
49 **HIS SERVICES IN THE APPLICATION OF THE PROVISIONS OF**
50 **THIS SECTION. (198.2a)**

- 51 c) **IN DEFAULT OF SUCH PERSON OR PERSONS, SUCH**
52 **ENFORCEMENT SHALL DEVOLVE UPON EITHER THE**

recovered. Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (199a) (Sec. 40, P.D. No. 49)

SECTION 86. Sec. 202 of the IP Code is designated under the subheading "General Provisions" under Part V, Chapter XII, Rights of Performers, Producers of Sound Recordings, and Broadcasting Organizations, and is hereby amended to read as follows:

GENERAL PROVISIONS

SEC. 202. Definitions. - For the purpose of this Act, the following terms shall have the following meanings:

202.1. "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work, **OR EXPRESSION OF FOLKLORE;**

202.2. "Sound recording" means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

202.3. An "audiovisual work or fixation" is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

202.4. "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

202.5. "Producer of a sound recording" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

202.6. "Publication of a fixed performance or a sound recording" means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, That copies are offered to the public in reasonable **QUANTITY** [quality]. **FOR THE PURPOSES OF THIS SECTION, SOUND RECORDINGS MADE AVAILABLE TO THE PUBLIC UNDER SECTION 208.4 SHALL BE CONSIDERED AS IF THEY HAD BEEN PUBLISHED.** PROVIDED FURT (a)

202.7. "Broadcasting" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also "broadcasting"; **TRANSMISSION OF ENCRYPTED SIGNALS** is where the means for decrypting are provided to the public by the broadcasting organization or with its consent; (a)

202.8. "REBROADCASTING" MEANS THE SIMULTANEOUS BROADCASTING BY ONE BROADCASTING ORGANIZATION OF THE BROADCAST OF ANOTHER BROADCASTING ORGANIZATION; (n)

202.9.[202.8.] "Broadcasting organization" shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and (202.8)

202.10.[202.9.] "Communication to the public of a performance or a sound recording" means the transmission to the public, by any medium, otherwise than by broadcasting, of [sounds of a performance or the representations of sounds fixed in a sound recording]**AN UNFIXED PERFORMANCE, OF SOUNDS OF A PERFORMANCE OR THE REPRESENTATION OF SOUNDS FIXED IN A SOUND RECORDING OR**

1 **202.10.**[202.9.] "Communication to the public of a performance or a
2 sound recording" means the transmission to the public, by any medium,
3 otherwise than by broadcasting, of [sounds of a performance or the
4 representations of sounds fixed in a sound recording]**AN UNFIXED**
5 **PERFORMANCE, OF SOUNDS OF A PERFORMANCE OR THE**
6 **REPRESENTATION OF SOUNDS FIXED IN A SOUND RECORDING OR**
7 **OF A PERFORMANCE FIXED IN AN AUDIOVISUAL WORK OR**
8 **FIXATION.** For purposes of Section 209, "communication to the public"
9 includes making the sounds or representations of sounds fixed in a
10 sound recording audible to the public **OR THE IMAGES AND/OR**
11 **SOUNDS IN A PERFORMANCE FIXED IN AN AUDIOVISUAL WORK OR**
12 **FIXATION VISIBLE AND/OR AUDIBLE TO THE PUBLIC.** (202.9a)

13
14 **SECTION 87.** Secs. 203 to 207 of the IP Code are hereby collectively designated
15 under the subheading "Performers" under Part V, Chapter XII, Rights of Performers,
16 Producers of Sound Recordings, and Broadcasting Organizations, and are hereby
17 amended to read as follows:

18 **PERFORMERS**

19 SEC. 203. *Scope of Performers' Rights.* - Subject to the provisions of
20 Section 212, performers shall enjoy the following exclusive rights:

21 203.1. As regards their performances, the right of authorizing:

- 22 (a) The broadcasting and other communication to the public of their
23 performance; and
24 (b) The fixation of their unfixed performance.

25 203.2. The right of authorizing the direct or indirect reproduction of their
26 performances fixed in sound recordings or audiovisual works or fixations
27 in any manner or form;

28 203.3. Subject to the provisions of Section 206, the right of authorizing
29 the first public distribution of the original and copies of their
30 performance fixed in the sound recordings or audiovisual works or
31 fixations through sale or rental of other forms of transfer of ownership;

32 203.4. The right of authorizing the commercial rental to the public of the
33 original and copies of their performances fixed in sound recordings or
34 audiovisual works or fixations, even after distribution of them by, or
35 pursuant to the authorization by the performer; and

36 203.5. The right of authorizing the making available to the public of their
37 performances fixed in sound recordings or audiovisual works or
38 fixations, by wire or wireless means, in such a way that members of the
39 public may access them from a place and time individually chosen by
40 them. (Sec. 42, P.D. No. 49a)

41 SEC. 204. Moral Rights of Performers. -

42 204.1. **RIGHTS GRANTED** - Independently of a performer's economic
43 rights, the performer, shall, as regards his live aural performances or
44 performances fixed in sound recordings or in audiovisual works or
45 fixations, have the right to claim to be identified as the performer of his
46 performances, except where the omission is dictated by the manner of
47 the use of the performance, and to object to any distortion, mutilation or
48 other modification of his performances that would be prejudicial to his
49 reputation.

50 204.2. **TERM OF PROTECTION.** - The rights granted to a performer in
51 accordance with Subsection **204.1** [203.1] shall be maintained and
52 exercised fifty (50) years after his death, by his heirs, and in default of
53 heirs, the government, where protection is claimed. (Sec. 43, P.D. no. 49)
54 (a)

1 **204.3. ENFORCEMENT REMEDIES. - IN THE ENFORCEMENT OF**
2 **THESE RIGHTS, SECTION 199 APPLIES MUTATIS MUTANDIS. (n)**

3 SEC. 205. *Limitation on Right. -*

4 205.1. Subject to the provisions of Section 206, once the performer has
5 authorized the broadcasting or fixation of his performance, [the
6 provisions of Sections 203 shall have no further application] **THE**
7 **EXCLUSIVE RIGHTS UNDER SUBSECTIONS 203.2 TO 203.5 SHALL**
8 **BE OWNED OR EXERCISED BY OR TRANSFERRED TO THE**
9 **PRODUCER OF THE SOUND RECORDING, OR OF THE AUDIOVISUAL**
10 **WORK OR FIXATION, SUBJECT TO ANY WRITTEN CONTRACT TO**
11 **THE CONTRARY BETWEEN THE PERFORMER AND THE PRODUCER.**
12 (a)

13 205.2. The provisions of Section 184 and Section 185 shall apply mutatis
14 mutandis to performers. (n)

15 SEC. 206. *Additional Remuneration for Subsequent Communications or*
16 *Broadcasts. - Unless otherwise provided in the contract, in every*
17 *communication to the public or broadcast of a performance subsequent*
18 *to the first communication or broadcast thereof by the broadcasting*
19 *organization, the performer shall be entitled to an additional*
20 *remuneration equivalent to at least five percent (5%) of the original*
21 *compensation he or she received for the first communication or*
22 *broadcast. (n)*

23 SEC. 207. *Contract Terms. - Nothing in this Chapter shall be construed*
24 *to deprive performers of the right to agree by contracts on terms and*
25 *conditions more favorable for them in respect of any use of their*
26 *performance. (n)*

27
28 **SECTION 88.** Secs. 208 to 210 of the IP Code are hereby collectively designated
29 under the subheading "Producers of Sound Recordings" under Part V, Chapter XII,
30 Rights of Performers, Producers of Sound Recordings, and Broadcasting
31 Organizations, and are hereby amended to read as follows:

32 [Chapter XIII.]
33 PRODUCERS OF SOUND RECORDINGS

34 SEC. 208. *Scope of Right. - Subject to the provisions of Section 212,*
35 *producers of sound recordings shall enjoy the following exclusive rights:*

36 208.1. The right to authorize the direct or indirect reproduction of their
37 sound recordings, in any manner or form; the placing of these
38 reproductions in the market and the right of rental or lending;

39 208.2. The right to authorize the first public distribution of the original
40 and copies of their sound recordings through sale or rental or other
41 forms of transferring ownership; and

42 208.3. The right to authorize the commercial rental to the public of the
43 original and copies of their sound recordings, even after distribution by
44 them by or pursuant to authorization by the producer. (Sec. 46, P.D. No.
45 49a)

46 208.4. The right to authorize the making available to the public of their
47 sound recordings in such a way that members of the public may access
48 the sound recording from a place and at a time individually chosen or
49 selected by them, as well as other transmissions of a sound recording
50 with like effect.

51 SEC. 209. [Communication to the Public.] **SINGLE EQUITABLE**
52 **REMUNERATION.-** [If a sound recording] **PERFORMERS AND**
53 **PRODUCERS OF SOUND RECORDINGS SHALL ENJOY THE RIGHT**

1 **TO A SINGLE EQUITABLE REMUNERATION FOR THE DIRECT OR**
2 **INDIRECT USE OF SOUND RECORDINGS** published for commercial
3 purposes, [or a reproduction of such sound recording, is used directly]
4 for broadcasting or for ANY [other] communication to the public, [or is
5 publicly performed with the intention of making and enhancing profit, a
6 single equitable remuneration for the performer or performers, and the
7 producer of the sound recording shall be paid by the user to both the
8 performers and the producer, who, in the absence of any agreement shall
9 share equally.] (a) (Sec. 47, P.D. No. 49a)

10 **THE ACCREDITED CMO REPRESENTING PERFORMERS AND**
11 **SOUND RECORDING PRODUCERS RESPECTIVELY SHALL BE**
12 **REQUIRED TO ENTER INTO AN AGREEMENT ON WHO SHALL**
13 **COLLECT THE SINGLE EQUITABLE REMUNERATION, INCLUDING**
14 **THE RATE OF SHARING AND THE OBLIGATION TO REMIT THE**
15 **SAME WITHIN A REASONABLE PERIOD. ABSENT ANY AGREEMENT**
16 **AS TO THE RATE OF SHARING, THE TWO PARTIES SHALL SHARE**
17 **EQUALLY THE AMOUNT COLLECTED. THE PAYMENT OF THE**
18 **SINGLE EQUITABLE REMUNERATION SHALL BE MADE ONLY**
19 **THROUGH THE CMO IDENTIFIED IN THE SAID AGREEMENT. (n)**

20
21 SEC. 210. *Limitation of Right.* - Sections 184 and 185 shall apply mutatis
22 mutandis to the producer of sound recordings. (Sec. 48, P.D. No. 49a)

23 **SECTION 89.** Sec. 211 of the IP Code is hereby designated under the
24 subheading "Broadcasting Organizations" under Part V, Chapter XII, Rights of
25 Performers, Producers of Sound Recordings, and Broadcasting Organizations, as
26 follows:

27 [Chapter XIV.]

28 BROADCASTING ORGANIZATIONS

29 SEC. 211. *Scope of Right.* - Subject to the provisions of Section 212,
30 broadcasting organizations shall enjoy the exclusive right to carry out,
31 authorize or prevent any of the following acts:

32 211.1. The rebroadcasting of their broadcasts;

33 211.2. The recording in any manner, including the making of films or the
34 use of video tape, of their broadcasts for the purpose of communication
35 to the public of television broadcasts of the same; and

36 211.3. The use of such records for fresh transmissions or for fresh
37 recording. (Sec. 52, P.D. No. 49)

38 **SECTION 90.** Sec. 212 of the IP Code is hereby designated under the
39 subheading "Limitations on Protection of Related Rights" under Part V, Chapter XII,
40 Rights of Performers, Producers of Sound Recordings, and Broadcasting
41 Organizations, as follows:

42 [Chapter XV]

43 LIMITATIONS ON PROTECTION OF RELATED RIGHTS

44 SEC. 212. *Limitations on THE Rights OF PERFORMERS, PRODUCERS*
45 **OF SOUND RECORDINGS, AND BROADCASTING ORGANIZATIONS. -**

46 **212.1. SECTIONS 203, 208, 209, AND 211 SHALL NOT APPLY**
47 **WHERE THE ACTS REFERRED TO IN THOSE SECTIONS ARE**
48 **RELATED TO:**

- 49 **A) THE USE BY A NATURAL PERSON EXCLUSIVELY FOR HIS**
50 **OWN PERSONAL PURPOSES;**
51 **B) USING SHORT EXCERPTS FOR REPORTING CURRENT**
52 **EVENTS;**

- 1 C) USE SOLELY FOR THE PURPOSE OF TEACHING OR FOR
2 SCIENTIFIC RESEARCH; AND
3 D) FAIR USE OF THE BROADCAST SUBJECT TO THE
4 CONDITIONS UNDER SECTION 185.

5 **212.2. IN ADDITION TO THOSE IN THE PRECEDING SUBSECTION,**
6 **THE LIMITATIONS PROVIDED IN THE** provisions of Chapter VIII shall
7 apply mutatis mutandis to the rights of performers, producers of sound
8 recordings and broadcasting organizations. (212a, Sec. 44, PD 49a)

9
10 **SECTION 91.** Chapter XVI, Term of protection, is hereby renumbered to Part V,
11 Chapter XIII, and amended to read as follows:

12 [Chapter XVI.]

13 **CHAPTER XIII.**

14 TERM OF PROTECTION

15 **SECTION 92.** Chapter XVII, Infringement, is hereby renamed as “Infringement of
16 Copyright” and renumbered to Part V, Chapter XIV, as follows:

17 [Chapter XVII.]

18 **CHAPTER XIV.**

19 **INFRINGEMENT OF COPYRIGHT**

20 **SECTION 93.** Section 216 is hereby split into Secs. 216 and 217 in are amended
21 to read as follows:

22 **SEC. 216. COPYRIGHT** Infringement. –

23 **216.1. COPYRIGHT INFRINGEMENT IS THE ACT OF VIOLATING ANY**
24 **OF THE EXCLUSIVE RIGHTS PROVIDED IN SECS. 177, 203, 208,**
25 **AND 211 OF THIS ACT.**

26 **216.2.**[Any person infringes a right protected under this Act when one:]
27 **THERE IS SUCH LIABILITY WHEN A PERSON:**

- 28 (a) Directly commits an infringement;
29 (b) Benefits from the infringing activity of another person who
30 commits an infringement if the person benefiting has been given
31 notice of the infringing activity and has the right and ability to
32 control the activities of the other person; **PROVIDED THAT, IF**
33 **UPON OBTAINING SUCH KNOWLEDGE OR AWARENESS OF**
34 **THE INFRINGING ACTIVITY, ONE ACTS EXPEDITIOUSLY TO**
35 **REMOVE, OR DISABLE ACCESS TO, THE MATERIAL, HE**
36 **SHALL NEITHER BE LIABLE FOR INFRINGEMENT NOR**
37 **DAMAGES, IF INFRINGEMENT IS NOT ESTABLISHED; OR**
38 (c) With knowledge of infringing activity, induces, causes or
39 materially contributes to the infringing conduct of another. (216a)

40 [216.1.]**SEC. 217.***Remedies for Infringement.* –

41 **217.1. INJUNCTION AND DESTRUCTION.** - Any person infringing a**NY**
42 **OF THE EXCLUSIVE** right**S PROVIDED IN SECTION 216.1**[protected]
43 under this law shall be liable **TO:**

- 44 (a) [To an]**AN** injunction restraining such infringement. The court
45 may also order the defendant to desist from an infringement,
46 among others, to prevent the entry into the channels of commerce
47 of imported goods that involve an infringement, immediately after
48 customs clearance of such goods. (216.1a)
49 [(b) To pay to the copyright proprietor or his assigns or heirs such
50 actual damages, including legal costs and other expenses, as he may

1 have incurred due to the infringement as well as the profits the
2 infringer may have made due to such infringement, and in proving
3 profits the plaintiff shall be required to prove sales only and the
4 defendant shall be required to prove every element of cost which he
5 claims, or, in lieu of actual damages and profits, such damages which
6 to the court shall appear to be just and shall not be regarded as
7 penalty: Provided, That the amount of damages to be awarded shall
8 be doubled against any person who:]

9 [(i) Circumvents effective technological measures; or]

10 [(ii) Having reasonable grounds to know that it will induce, enable,
11 facilitate or conceal the infringement, remove or alter any
12 electronic rights management information from a copy of a work,
13 sound recording, or fixation of a performance, or distribute, import
14 for distribution, broadcast, or communicate to the public works or
15 copies of works without authority, knowing that electronic rights
16 management information has been removed or altered without
17 authority.]

18 **(B)** [(c)] Deliver under oath, for impounding during the pendency of
19 the action, upon such terms and conditions as the court may
20 prescribe, sales invoices and other documents evidencing sales, all
21 articles and their packaging alleged to infringe a copyright and
22 implements for making them. (216.1c)

23 **(C)** [(d)] Deliver under oath for destruction without any compensation
24 all infringing copies or devices, as well as all plates, molds, or
25 other means for making such infringing copies as the court may
26 order. (216.1d)

27 **(D)** [(e) Such other terms and conditions, including the payment of
28 moral and exemplary damages, which the court may deem proper,
29 wise and equitable and the destruction of infringing copies of the
30 work even in the event of acquittal in a criminal case.] **IN AN**
31 **INFRINGEMENT ACTION, THE COURT SHALL ALSO HAVE THE**
32 **POWER TO ORDER THE SEIZURE AND IMPOUNDING OF ANY**
33 **ARTICLE WHICH MAY SERVE AS EVIDENCE IN THE COURT**
34 **PROCEEDINGS, IN ACCORDANCE WITH THE RULES ON**
35 **SEARCH AND SEIZURE INVOLVING VIOLATIONS OF**
36 **INTELLECTUAL PROPERTY RIGHTS ISSUED BY THE**
37 **SUPREME COURT.**

38 **THE FOREGOING SHALL NOT PRECLUDE AND INDEPENDENT**
39 **SUIT FOR RELIEF BY THE INJURED PARTY BY WAY OF**
40 **DAMAGES, INJUNCTION, ACCOUNTS, OR OTHERWISE.**

41 **217.2. DAMAGES. -**

42 **(A)** The infringer shall also pay to the copyright proprietor or his
43 assigns or heirs:

44 (i) such actual damages, including legal costs and other
45 expenses, as he may have incurred due to the infringement
46 as well as the profits the infringer may have made due to
47 such infringement, **INCLUDING ADVERTISING REVENUES**
48 and in proving profits the plaintiff shall be required to prove
49 sales only and the defendant shall be required to prove
50 every element of cost which he claims, or, in lieu of actual
51 damages and profits, such damages which to the court
52 shall appear to be just and shall not be regarded as
53 penalty, **AS WELL AS** [Such other terms and conditions,
54 including the payment of] moral and exemplary damages,
55 **ATTORNEY'S FEES**, which the court may deem proper,
56 wise and equitable; and the destruction of infringing copies
57 of the work even in the event of acquittal in a criminal case
58 **OR** (216.1(c)a, 216.1(d)a)]

59 (ii) **IN LIEU OF THE ABOVE DAMAGES, STATUTORY**
60 **DAMAGES FOR ALL INFRINGEMENTS INVOLVED IN**
61 **THE ACTION AT THE ELECTION OF THE** [The] copyright
62 owner [may elect,] at any time before final judgment is

rendered;-[to recover instead of actual damages and profits,
an award of statutory damages for all infringements
involved in an action in] a sum equivalent to the filing fee of
the infringement action **OR** [but not less than Fifty] **ONE**
HUNDRED thousand pesos (Php**100,000.00** [50,000.00]).
[In awarding statutory damages, the court may consider the
following factors:]

- [(1) The nature and purpose of the infringing act;]
- [(2) The flagrancy of the infringement;]
- [(3) Whether the defendant acted in bad faith;]
- [(4) The need for deterrence;]
- [(5) Any loss that the plaintiff has suffered or is likely to
suffer by reason of the infringement; and]
- [(6) Any benefit shown to have accrued to the defendant
by reason of the infringement.]

In case the infringer was not aware and had no reason to
believe that his acts constitute an infringement of
copyright, the court in its discretion may reduce the award
of statutory damages to a sum of not more than Ten
thousand pesos (Php10,000.00), **SUBJECT TO**
SUBSECTION B BELOW. [Provided, The amount of actual
damages to be awarded shall be doubled against any
person who:]

- [(i) Circumvents effective technological measures; or]
- [(ii) Having reasonable grounds to know that it will induce,
enable, facilitate or conceal the infringement, remove or
alter any electronic rights management information from a
copy of a work, sound recording, or fixation of a
performance, or distribute, import for distribution,
broadcast, or communicate to the public works or copies of
works without authority, knowing that electronic rights
management information has been removed or altered
without authority. (216a)]

(B) The amount of **ACTUAL OR STATUTORY** damages to be awarded
shall be doubled against any person who:

- (i) Circumvents effective technological measures; or
- (ii) Having reasonable grounds to know that it will induce,
enable, facilitate or conceal the infringement, remove or
alter any electronic rights management information from a
copy of a work, sound recording, or fixation of a
performance, or distribute, import for distribution,
broadcast, or communicate to the public works or copies of
works without authority, knowing that electronic rights
management information has been removed or altered
without authority. (216a)

[216.2. In an infringement action, the court shall also have the power to
order the seizure and impounding of any article which may serve as
evidence in the court proceedings, in accordance with the rules on
search and seizure involving violations of intellectual property rights
issued by the Supreme Court. (Sec.28, P.D. No. 49a)]

[The foregoing shall not preclude an independent suit for relief by the
injured party by way of damages, injunction, accounts or otherwise.]

SECTION 94. Sec. 219 is hereby amended as follows:

Section 219. Presumption of Authorship. . - 219.1. The natural person
whose name is indicated on a work in the usual manner as the author

1 shall, in the absence of proof to the contrary, be presumed to be the
2 author of the work. This provision shall be applicable even if the name is
3 a pseudonym, where the pseudonym leaves no doubt as to the identity of
4 the author.

5 219.2. The person or body corporate whose name appears on a
6 audio-visual work **OR ON SOUND RECORDING** in the usual manner
7 shall, in the absence of proof to the contrary, be presumed to be the
8 maker of said work **OR THE PRODUCER OF SAID SOUND**
9 **RECORDING.** (n)

10
11 **SECTION 95.** Chapter XVII, Scope of Application, is designated under Part V as
12 Chapter XV, and Secs. 221 to 224 therein are collectively amended as follows:

13 [Chapter XVIII.]

14 **CHAPTER XV.**

15 **SCOPE OF APPLICATION**

16 SEC. 221. [*Points of Attachment*]**SCOPE OF PROTECTION** for Works
17 under Sections 172 and 173. - 221.1. The protection afforded by this Act
18 to copyrightable works under Sections 172 and 173 shall apply to:

- 19 (a) Works of authors who are nationals of, or have their habitual
20 residence in, the Philippines;
21 (b) Audio-visual works the producer of which has his headquarters or
22 habitual residence in the Philippines;
23 (c) Works of architecture erected in the Philippines or other artistic
24 works incorporated in a building or other structure located in the
25 Philippines;
26 (d) Works first published in the Philippines; and
27 (e) Works first published in another country but also published in the
28 Philippines within thirty days, irrespective of the nationality or
29 residence of the authors.

30 221.2. The provisions of this Act shall also apply to works that are to be
31 protected by virtue of and in accordance with any international
32 convention or other international agreement to which the Philippines is a
33 party. (n)

34 SEC. 222. [*Points of Attachment*]**SCOPE OF PROTECTION** for Performers.
35 - The provisions of this Act on the protection of performers shall apply to:

36 222.1. Performers who are nationals of the Philippines;

37 222.2. Performers who are not nationals of the Philippines but whose
38 performances:

- 39 (a) Take place in the Philippines; or
40 (b) Are incorporated in sound recordings **OR IN AUDIOVISUAL**
41 **FIXATIONS** that are protected under this Act; or
42 (c) Which has not been fixed in sound recordings **OR IN**
43 **AUDIOVISUAL FIXATIONS** but are carried by broadcast
44 qualifying for protection under this Act. (n)

45 SEC. 223. [*Points of Attachment*] **SCOPE OF PROTECTION** for Sound
46 Recordings. - The provisions of this Act on the protection of sound
47 recordings shall apply to:

48 223.1. sound recordings the producers of which are nationals of the
49 Philippines; and

50 223.2. sound recordings that were first published in the Philippines. (n)

SEC. 224. [*Points of Attachment*] **SCOPE OF PROTECTION** for Broadcasts. - 224.1. The provisions of this Act on the protection of broadcasts shall apply to:

- (a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and
- (b) Broadcasts transmitted from transmitters situated in the Philippines.

SEC. 225. [224.2.]**APPLICABILITY OF PROTECTION UNDER INTERNATIONAL CONVENTIONS.** - The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

SECTION 96. A new Part VI entitled "Common Provisions", which shall be populated with the provisions earlier removed, is hereby introduced after Section 225, thus:

PART VI

COMMON PROVISIONS

SECTION 97. A new Part VI, Chapter I, entitled "General Provisions" is hereby introduced, and shall contain the following provisions:

CHAPTER I GENERAL PROVISIONS

SEC. 226[160]. *Right of Foreign [Corporation]***NATIONAL OR ENTITY** to Sue in [*Trademark or Service Mark Enforcement*] Action. - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a **CRIMINAL**, civil, or administrative action **UNDER THIS ACT**[hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description,] whether or not it is licensed to do business in the Philippines under existing laws. (a) (Sec. 21-A, R.A. No. 166a)

SEC. 227. NOTICE. -

227.1. GRANTED PATENTS; REGISTERED UTILITY MODELS, INDUSTRIAL DESIGNS, AND LAYOUT-DESIGNS. - [SEC. 80. Damages; Requirement of Notice.] - Damages cannot be recovered for acts of infringement committed before the infringer had known, or had reasonable grounds to know of the patent. It is presumed that the infringer had known of the patent if on the patented product, or on the container or package in which the article is supplied to the public, or on the advertising material relating to the patented product or process, are placed the words "Philippine Patent" with the number of the patent. (80) (Sec. 44, R.A. No. 165a)

227.2. REGISTERED TRADEMARKS, SERVICE MARKS, COLLECTIVE MARKS, CERTIFICATION MARKS, AND WELL-KNOWN MARKS. -[SEC. 158. Damages; Requirement of Notice.] - In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle [®] or if the defendant had otherwise actual notice of the registration. (158) (Sec. 21, R.A. No. 166a)

1 **227.3.**[SEC. 192. *Notice of Copyright.* - Each copy of a work published or
2 offered for sale may contain a notice bearing the name of the copyright
3 owner, and the year of its first publication, and, in copies produced after
4 the creator's death, the year of such death. (Sec. 27, P.D. No. 49a) **SUCH**
5 **NOTICE IS NOT A REQUIREMENT IN ORDER TO CLAIM DAMAGES.**
6 (192)

7 SEC. [164.]**228.** *Notice of Filing Suit Given to the Director GENERAL.* - It
8 shall be the duty of the clerks of such courts within one (1) month after
9 the filing of any action, suit, or proceeding involving **ANY**
10 **INTELLECTUAL PROPERTY GRANTED PROTECTION BY**[a mark
11 registered under the provisions of] this Act, to notify the Director
12 **GENERAL** in writing setting forth: the names and addresses of the
13 litigants and designating the number of the registration or registrations
14 and within one (1) month after the judgment is entered or an appeal is
15 taken, the clerk of court shall give notice thereof to the Office, and the
16 latter shall endorse the same upon the filewrapper of the said
17 registration or registrations, **IF APPLICABLE**, and incorporate the same
18 as a part of the contents of said filewrapper. (164)

19 SEC. [220A.]**229.***Disclosure of Information.* - Where any article or its
20 packaging or an implement for making it is seized or detained under a
21 valid search and seizure under this Act is, or is reasonably suspected to
22 be, by an authorized enforcement officer, in violation of this Act, the said
23 officer shall, wherever reasonably practicable, notify the owner of the
24 **INTELLECTUAL PROPERTY RIGHTS** [copyright] in question or his
25 authorized agent of the seizure or detention, as the case may be. (220A)

26 (As amended by Republic Act No. 10372 or an Act Amending certain
27 provisions of Republic Act No. 8293 otherwise known as the Intellectual
28 Property Code of the Philippines, and for other Purposes)

29 **SECTION 98.** A new Part VI, Chapter II, entitled "Jurisdiction" is hereby
30 introduced, and shall contain the following provisions:

31 **CHAPTER II**
32 **JURISDICTION**

33 SEC. [225.]**230.** *Jurisdiction.* - Without prejudice to the provisions of
34 **PART I**, [Subsection 7.1 (c)], actions under this Act shall be cognizable
35 by the courts with appropriate jurisdiction under existing law**S.** (Sec. 57,
36 P.D. No.49a)

37 [151.2. Notwithstanding the foregoing provisions, the court or the
38 administrative agency vested with jurisdiction to hear and adjudicate any
39 action to enforce the rights to a registered mark shall likewise exercise
40 jurisdiction to determine whether the registration of said mark may be
41 cancelled in accordance with this Act.]**THE FILING OF A SUIT TO**
42 **ENFORCE INTELLECTUAL PROPERTY RIGHTS** [the registered mark]
43 **WITH THE PROPER COURT OR AGENCY SHALL EXCLUDE ANY**
44 **OTHER COURT OR AGENCY FROM ASSUMING JURISDICTION OVER**
45 **A SUBSEQUENTLY FILED A SUIT TO ENFORCE THE SAME** [petition to
46 cancel the same mark.] **ON THE OTHER HAND, THE EARLIER FILING**
47 **OF SUCH SUIT** [petition to cancel the mark] **WITH THE BUREAU OF**
48 **LEGAL AFFAIRS SHALL NOT CONSTITUTE A PREJUDICIAL**
49 **QUESTION THAT MUST BE RESOLVED BEFORE AN ACTION TO**
50 **ENFORCE THE RIGHTS TO SAME REGISTERED MARK MAY BE**
51 **DECIDED.** (151.2) (Sec. 17, R.A. No. 166a)

52 SEC. [161.]**231.** *Authority OF THE COURT to Determine Right to*
53 *Registration OR OWNERSHIP.* - In any action involving **INTELLECTUAL**
54 **PROPERTY** [a registered mark], the court may determine the right to
55 registration **OR OWNERSHIP, AND IF APPLICABLE**, order the
56 cancellation of a registration, in whole or in part, and otherwise rectify
57 the register with respect to the registration of any party to the action in
58 the exercise of this. Judgment and orders shall be certified by the court

to the Director **GENERAL**, who shall **CAUSE THE** [make appropriate] entry **OF THE APPROPRIATE ANNOTATION** upon the records of the **RESPECTIVE** Bureau, and shall be controlled thereby. (161a) (Sec. 25, R.A. No. 166a)

SEC. [162.]**232. Action for False or Fraudulent Declaration.** - Any person who shall procure **GRANT**, registration, **OR RECORDATION** in the Office of **ANY INTELLECTUAL PROPERTY** [a mark] by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (Sec. 26, R.A. No. 166)

SEC. [233.]**233. Appeals.** - [233.1.]**233.1.** Appeals from decisions of regular courts shall be governed by the Rules of Court. [Unless restrained by a higher court, the judgment of the trial court shall be executory even pending appeal under such terms and conditions as the court may prescribe.] (233.1a)

[233.2.] **233.2.** Unless expressly provided in this Act or other statutes, appeals from [decisions]**ACTIONS** of administrative officials shall be provided in the **RELEVANT** regulations. (233.2a)

SECTION 99. The Chapter on Institution of Actions, previously Chapter XIX, is now renumbered as Chapter III of Part VI, shall contain the following provisions:

[Chapter XIX.]

CHAPTER III INSTITUTION OF ACTIONS

SEC. **234.**[226. *Damages*]**PERIOD TO FILE ACTIONS.- EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, THE PERIOD TO FILE ACTIONS TO ENFORCE RIGHTS UNDER THIS ACT SHALL BE COTERMINOUS WITH THE TERM OF PROTECTION. IF THE CAUSE OF ACTION ACCRUES WITHIN THE LAST FOUR (4) YEARS BEFORE THE END OF THE TERM OF PROTECTION, AN ACTION MAY BE FILED WITHIN FOUR YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES. SUCH RIGHT TO INSTITUTE ACTIONS IS SUBJECT TO ESTOPPEL, LACHES, AND ACQUIESCENCE, WHERE APPLICABLE.**[No damages may be recovered under this Act after the lapse of four (4) years from the time the cause of action arose;](n) (Sec. 58, P.D. No. 49)

SEC. [81]. **235. Defenses in Action for Infringement.** - In an action for infringement, the defendant, in addition to other defenses available to him, may show the invalidity of the patent, **UTILITY MODEL, OR DESIGN** or any claim thereof, **OF THE MARK OF OWNERSHIP, OR OF THE COPYRIGHT, BASED** on any of the grounds on which a petition of cancellation can be brought under [Section 61 hereof]-**THIS ACT.** (Sec. 45, R.A. No. 165)

SECTION 100. A new Part VI, Chapter IV, entitled "Criminal Penalties" is hereby introduced, and shall contain the following provisions:

Chapter IV. CRIMINAL PENALTIES

SEC. [84.]**236. Criminal Action [for Repetition of] FOR PATENT Infringement.** - If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than **ONE (1) YEAR** [six (6) months] but not more than **FIVE (5)** [three (3)] years and/or a fine of not less than One hundred thousand pesos (PhP

100,000) but not more than Three hundred thousand pesos (Php 300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three (3) years from date of the commission of the crime. (Sec. 48, R.A. No. 165a) (84)

SEC. [170.]**237. CRIMINAL ACTION FOR TRADEMARK INFRINGEMENT**
[Penalties]. - **237.1.** Independent of the civil and administrative sanctions imposed by law, **ANY PERSON WHO IS FOUND GUILTY OF COMMITTING ANY OF THE ACTS MENTIONED IN SECTION 155, SECTION 168 AND SUBSECTION 169.1 OR AIDING OR ABETTING SUCH INFRINGEMENT SHALL BE PUNISHED WITH** a criminal penalty of:

- (A) imprisonment from **THREE (3) YEARS TO FIVE (5) YEARS, OR A FINE RANGING FROM ONE HUNDRED THOUSAND PESOS (P100,000) TO FOUR HUNDRED THOUSAND PESOS (P400,000), OR BOTH FOR THE FIRST OFFENSE;**
- (B) **IMPRISONMENT FROM FIVE (5) YEARS AND ONE (1) DAY TO SEVEN (7) YEARS, OR A FINE RANGING FROM OVER FOUR HUNDRED THOUSAND PESOS (P400,000) TO TWO MILLION PESOS (P2,000,000), OR BOTH FOR THE SECOND OFFENSE;**
- (C) **IMPRISONMENT FROM SEVEN (7) YEARS AND ONE (1) DAY TO TEN (10) YEARS, OR A FINE RANGING FROM OVER TWO MILLION PESOS (P2,000,000) TO FOUR MILLION PESOS (P4,000,000), OR BOTH FOR THE THIRD OR OFTENER OFFENSE;**
- (D) **IN ALL CASES, SUBSIDIARY IMPRISONMENT IN CASES OF INSOLVENCY.**

237.2. THE PENALTY IMPOSED SHALL BE THE MAXIMUM IF THE INFRINGEMENT IS COMMITTED WILLFULLY AND IN A COMMERCIAL SCALE AND IF COMMITTED IN RELATION TO REPUBLIC ACT NO. 10175, OTHERWISE KNOWN AS THE CYBERCRIME PREVENTION ACT OF 2012.

237.3. IN CASE OF COUNTERFEIT GOODS THAT THREATEN PUBLIC HEALTH AND SAFETY, THE COURT SHALL IMPOSE THE PENALTY OF SEVEN (7) YEARS IMPRISONMENT OR A FINE OF FOUR MILLION PESOS (P4,000,000), OR BOTH.

[two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000) shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1;](Arts. 188 and 189, Revised Penal Code) (170a)

SEC. [217.]**238. Criminal [Penalties] ACTION FOR COPYRIGHT INFRINGEMENT.** - [217.1.] **238.1.** Independent of the civil and administrative sanctions [imposed]**IMPOSABLE** by law, **ANY[Any]** person infringing any right secured by provisions of Part [IV]**V** of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- (a) Imprisonment of **TWO (2)** [one (1)] year**S** to **FOUR (4)** [three (3)] years, **OR**[plus] a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000), **OR BOTH** for the first offense.
- (b) Imprisonment of **FOUR (4)**[three (3)] years and one (1) day to **SEVEN (7)**[six (6)] years, **OR**[plus] a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000), **OR BOTH** for the second offense.
- (c) Imprisonment of **SEVEN (7)**[six (6)] years and one (1) day to **TWELVE (12)** [nine (9)] years, or plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000), **OR BOTH** for the third and subsequent offenses.

(d) In all cases, subsidiary imprisonment in cases of insolvency.

[217.2.]**238.2.** In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement: Provided, That the respective maximum penalty stated in Section [217.1.]**238.1.** (a), (b) and (c) herein for the first, second, third and subsequent offense, shall be imposed when the infringement is committed by:

- (a) **THROUGH** the circumvention of effective technological measures;
 - (b) **THROUGH** the removal or alteration of any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, by a person, knowingly and without authority; [or]
 - (c) **THROUGH** the distribution, importation for distribution, broadcast, or communication to the public of works or copies of works, by a person without authority, knowing that electronic rights management information has been removed or altered without authority;-
- (D) BY MEANS OF ILLICIT STREAMING; OR**
(E) IN RELATION TO REPUBLIC ACT NO. 10175, OTHERWISE KNOWN AS THE CYBERCRIME PREVENTION ACT OF 2012.

(As amended by Republic Act No.10372 or an Act Amending certain provisions of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines, and for other Purposes)

[217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:]

- [(a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;]
- [(b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or]
- [(c) Trade exhibit of the article in public,]

[shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P.D. No. 49a)]

SECTION 101. A new Part VI, Chapter V, entitled "Other Sanctions" is hereby introduced, and shall contain a new Sec. 239:

Chapter V. OTHER SANCTIONS

SEC. 239. REVOCATION OF BUSINESS PERMIT, LICENSE, OR AUTHORITY; BLACKLISTING FROM GOVERNMENT PROCUREMENT. - UPON RECOMMENDATION OF THE OFFICE, IN CASE OF REFUSAL OR FAILURE TO COMPLY WITH THE DECISION OR ORDER OF THE DIRECTOR, THE APPROPRIATE AGENCY, INCLUDING LOCAL GOVERNMENT UNITS, SHALL CANCEL, REVOKE, OR SUSPEND ANY BUSINESS PERMIT, LICENSE, AUTHORITY, AND SHALL BE BLACKLISTED FROM GOVERNMENT PROCUREMENT TRANSACTIONS.

SECTION 102. A new Part VI, Chapter VI, entitled "Infringing Articles" is hereby introduced, and shall contain the following provisions:

Chapter VI. INFRINGEMENT ARTICLES

[169.2.]**SEC. 240. PROHIBITION OF ENTRY INTO THE PHILIPPINES.** - Any **INFRINGING** goods **OR ARTICLES** [marked or labeled in contravention of the provisions of this Section] shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (169.2) (Sec. 30, R.A. No. 166a)

SEC. [190.]241. Importation and Exportation of Infringing Materials. - Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part **VIV** of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)

[216.2.]**SEC. 242. POWER OF COURT TO ORDER SEIZURE OF EVIDENCE.** - In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings, in accordance with the rules on search and seizure involving violations of intellectual property rights issued by the Supreme Court. (Sec.28, P.D. No. 49a)

The foregoing shall not preclude an independent suit for relief by the injured party by way of damages, injunction, accounts or otherwise. (216.2)

SEC. [157.]243. Power of Court to Order DESTRUCTION OR DISPOSAL OF Infringing GOODS AND MaterialS Destroyed. - [157.1.] **243.1. WITHOUT PREJUDICE TO SECTION 10.2(B)(III),** in any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed.

[157.2.]**243.2. IN LIEU OF DESTRUCTION, THE COURT MAY ORDER THE DONATION TO DISTRESSED COMMUNITIES THROUGH THE LOCAL GOVERNMENT UNITS, OR TO CHARITABLE OR DISASTER RELIEF PUBLIC AND PRIVATE INSTITUTIONS; PROVIDED, THAT, IN THE EXERCISE OF THIS POWER, THE COURT SHALL ENSURE THAT THE INFRINGING GOODS ARE DISPOSED OF OUTSIDE THE CHANNELS OF COMMERCE IN SUCH A MANNER AS TO AVOID ANY HARM CAUSED TO THE RIGHT HOLDER, AND TO MINIMIZE THE RISKS OF FURTHER INFRINGEMENT.** In regard to counterfeit goods, the simple removal of the trademark affixed shall not be sufficient other than in exceptional cases which shall be determined by the Regulations, to permit the release of the goods into the channels of commerce; **PROVIDED FURTHER THAT COUNTERFEIT OR INFRINGING GOODS THAT POSE A THREAT, OR ARE HARMFUL, TO HEALTH, SAFETY, AND SECURITY SHALL NOT BE DONATED.** (a) (Sec. 24, R.A. No. 166a)

243.3. [76.5.] The court may, in its discretion, order that the infringing goods, materials and implements predominantly used in the infringement be disposed of outside the channels of commerce or destroyed, without compensation.; (76.5) ~~and~~ (Sec. 42, R.A. No. 165a)

SECTION 103. Chapter XX on Miscellaneous Provisions shall become Part VII, and the provisions therein are renumbered accordingly, as follows:

PART VII

[Chapter XX.]

MISCELLANEOUS PROVISIONS

SEC. [227.]**244.***Ownership of Deposit and Instruments.* - All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60, P.D. No. 49)

SEC. [228.]**245.***Public Records.* - The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. (Sec. 61, P.D. No. 49)

SEC. [229.]**246.***Copyright Division Fees.* - The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. (Sec. 62, P.D. 49a)

[SEC. 230. *Adoption of Intellectual Property (IP) Policies.* - Schools and universities shall adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees, and adopting locally-established industry practice fair use guidelines. These policies may be developed in relation to licensing agreements entered into by the learning institution with a collective licensing organization.]

[(As amended by Republic Act No.10372 or an Act Amending certain provisions of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines, and for other Purposes)]

SECTION 104. Part VI, Final Provisions, shall become Part VIII, and the provisions therein are renumbered accordingly, as follows:

PART VIII

FINAL PROVISIONS

[SEC. 231. *Equitable Principles to Govern Proceedings.* - In all inter partes proceedings in the Office under this Act, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied. (Sec. 9-A, R.A. No. 165)]

SEC. [232.]**247.***Reverse Reciprocity of Foreign Laws.* - Any condition, restriction, limitation, diminution, requirement, penalty or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction. (232)

[SEC. 233. *Appeals* - 233.1. Appeals from decisions of regular courts shall be governed by the Rules of Court. Unless restrained by a higher court, the judgment of the trial court shall be executory even pending appeal under such terms and conditions as the court may prescribe. (233.1a)]

1 [233.2. Unless expressly provided in this Act or other statutes, appeals
2 from decisions of administrative officials shall be provided in the
3 Regulations. (233.2a)]

4 SEC. [234.]**248. Organization of the Office; Exemption from the Salary**
5 *Standardization Law and the Attrition Law. - 248.1.* [234.1.] The Office
6 shall be organized within one (1) year after the approval of this Act. It
7 shall not be subject to the provisions of Republic Act. No. 7430. (234.1)

8 [234.2.]**248.2.** The Office shall institute its own compensation structure:
9 Provided, That the Office shall make its own system to conform as closely
10 as possible with the principles provided for under Republic Act No. 6758.
11 (234.2)

12 SEC. [235.]**249. Abolition of the Bureau of Patents, Trademarks, and**
13 *Technology Transfer. -* The Bureau of Patents, Trademarks, and
14 Technology Transfer under the Department of Trade and Industry is
15 hereby abolished. All unexpended funds and fees, fines, royalties and
16 other charges collected for the calendar year, properties, equipment and
17 records of the Bureau of Patents, Trademarks and Technology Transfer,
18 and such personnel as may be necessary are hereby transferred to the
19 Office. Personnel not absorbed or transferred to the Office shall enjoy the
20 retirement benefits granted under existing law, otherwise, they shall be
21 paid the equivalent of one month basic salary for every year of service, or
22 the equivalent nearest fractions thereof favorable to them on the basis of
23 the highest salary received. (235)

24 SEC. [236.]**250. Applications Pending on Effective Date of Act. -**
25 [236.1.]**250.1.** All applications for patents pending in the Bureau of
26 Patents, Trademarks and Technology Transfer shall be proceeded with
27 and patents thereon granted in accordance with the Acts under which
28 said applications were filed, and said Acts are hereby continued to be
29 enforced, to this extent and for this purpose only, notwithstanding the
30 foregoing general repeal thereof: Provided, That applications for utility
31 models or industrial designs pending at the effective date of this Act,
32 shall be proceeded with in accordance with the provisions of this Act,
33 unless the applicants elect to prosecute said applications in accordance
34 with the Acts under which they were filed. (236.1)

35 [236.2.] **250.2.** All applications for registration of marks or trade names
36 pending in the Bureau of Patents, Trademarks and Technology Transfer
37 at the effective date of this Act may be amended, if practicable to bring
38 them under the provisions of this Act. The prosecution of such
39 applications so amended and the grant of registrations thereon shall be
40 proceeded with in accordance with the provisions of this Act. If such
41 amendments are not made, the prosecution of said applications shall be
42 proceeded with and registrations thereon granted in accordance with the
43 Acts under which said applications were filed, and said Acts hereby
44 continued in force to this extent for this purpose only, notwithstanding
45 the foregoing general repeal thereof. (236.2)

46 SEC. [237.]**251. Preservation of Existing Rights. -** Nothing herein shall
47 adversely affect the rights on the enforcement of rights in patents, utility
48 models, industrial designs, marks and works, acquired in good faith
49 prior to the effective date of this Act. (237)

50 SEC. [238.]**252. Notification on Berne Appendix. -** The Philippines shall by
51 proper compliance with the requirements set forth under the Appendix of
52 the Berne Convention (Paris Act, 1971) avail itself of the special
53 provisions regarding developing countries, including provisions for
54 licenses grantable by competent authority under the Appendix. (238)

55 SEC. [239.]**253. Appropriations. -** The funds needed to carry out the
56 provisions of this Act shall be charged to the appropriations of the
57 Bureau of Patents, Trademarks, and Technology Transfer under the
58 current General Appropriations Act and the fees, fines, royalties and

other charges collected by the Bureau for the calendar year pursuant to Sections 14.1 and 234 of this Act. Thereafter such sums as may be necessary for its continued implementations shall be included in the annual General Appropriations Act. (239)

SEC. [240.]**254.Repeals.** – [240.1.]**254.1**[All Acts and parts of Acts inconsistent herewith, more particularly] Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed. **ALL LAWS AND PARTS THEREOF INCONSISTENT WITH THIS ACT ARE LIKEWISE REPEALED.** (240.1)

[240.2.]**254.2** Marks registered under Republic Act No. 166 shall remain in force but shall be deemed to have been granted under this Act and shall be due for renewal within the period provided for under this Act and, upon renewal, shall be reclassified in accordance with the International Classification. Trade names and marks registered in the Supplemental Register under Republic Act No. 166 shall remain in force but shall no longer be subject to renewal. (240.2)

[240.3.]**254.3** The provisions of this Act shall apply to works in which copyright protection obtained prior to the effectivity of this Act is subsisting: Provided, That the application of this Act shall not result in the diminution of such protection. (240.3)

SEC. [241]. **255. Separability.** – If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby. (241)

SEC. [242.]**256.Effectivity.** – This Act shall take effect on 1 January 1998. (242)

SECTION 105. *Separability.* - If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby.

SECTION 106. *Effectivity.* - This Act shall take effect on 1 January 2020.

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