

LAW N° 31/2009 OF 26/10/2009 ON THE PROTECTION OF INTELLECTUAL PROPERTY

We, KAGAME Paul,
President of the Republic;

THE PARLIAMENT HAS ADOPTED, AND WE SANCTION, PROMULGATE THE FOLLOWING LAW AND ORDER IT TO BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA

THE PARLIAMENT:

The Chamber of Deputies in its session of 11 February 2009;

The Senate in its session of 12 January 2009;

Given the Constitution of the Republic of Rwanda of June 4, 2003, as amended and completed to date; especially in its articles 29, 43, 51, 62, 66, 67, 88, 89, 90, 93, 95, 108, 118 and 201;

Given the Law n° 17/1983 of August 18, 1983 on accession of Rwanda to the Convention establishing the World Intellectual Property Organization (WIPO), signed in Stockholm, July 14, 1967;

Given the Law n° 17/1983 of August 18, 1983 on accession of Rwanda to the Paris Convention for the Protection of Industrial Property;

Given the Law n° 18/1983 of August 18, 1983 on accession of Rwanda to the Bern Convention for the Protection of Literary and Artistic Works;

Given the Law of May 26, 1996 on accession of Rwanda to the World Trade Organisation (WTO);

Given the law n°18/2004 of June 20, 2004 on code of civil, administrative and commercial procedures of Rwanda as modified and completed to date;

Having reviewed the Law of February 25, 1963 on Patents;

Having reviewed the Law of February 25, 1963 on Factory or Trade marks;

Having reviewed the Law of February 25, 1963 on Industrial Designs;

Having reviewed the Law N° 27/1983 of November 15, 1983 governing the Copyrights;

Having reviewed the Decree Law N° 41/63 of February 24, 1950 on the Elimination of the unfair Competition;

ADOPTS:

PART ONE: GENERAL PROVISIONS

TITLE ONE: PRELIMINARY PROVISIONS

CHAPTER ONE: INTELLECTUAL PROPERTY CONCEPT

SECTION I: PURPOSE

Article one: Intellectual property protection

This Law protects authors of the following categories:

- 1° inventors,
- 2° innovators,
- 3° creators of industrial designs,
- 4° creators of layout designs of integrated circuits,
- 5° creators of distinctive signs either used in trade,
- 6° authors of literary, artistic and scientific works, performers,
- 7° phonogram producers,
- 8° any other author of an original intellectual creation.

The law also covers:

- 1° owners of distinctive signs used in trade;
- 2° broadcasting organisations.

The protection of intellectual property rights shall include all matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights, penalty awarded in case of non compliance as well as other matters affecting the use of intellectual property rights.

Article 2: Objective of intellectual property protection

The protection and enforcement of intellectual property rights intend to:

- 1° contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare of population, and to a balance of rights and obligations;
- 2° create a fair and equitable commercial environment by the reduction and the prevention of distortions and impediments to free trade and to set up principles, rules and disciplines dealing with trade in counterfeit goods.

In particular:

- 1° to encourage innovations and new inventions and their industrial or commercial use, in the Republic of Rwanda, so as to contribute to industrial and commercial development.
- 2° to encourage creation of original works in literary artistic or scientific fields and their use, in the Republic of Rwanda, so as to contribute to cultural, social economic, development of the population.

Article 3: Basic meanings

In accordance with provisions of this Law, “intellectual property” shall mean:

- 1° the rights relating to literary, artistic and scientific works,
- 2° the rights of performances of performing artists,
- 3° rights relating to phonograms,
- 4° wireless broadcasting,
- 5° inventions in all fields of human endeavor, to scientific discoveries,
- 6° industrial designs and models,
- 7° trademarks and service marks,
- 8° commercial names and designations,
- 9° protection against unfair competition;
- 10° any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Article 4: Main branches of intellectual property

Intellectual property referred to in this law concern the following two main branches:

- 1° industrial property which applies to the exclusive right to use inventions, innovations or utility models, product or service marks, industrial designs or models, trade names, geographical indications, layout designs (topography) of integrated circuits and the right to request the elimination of acts of unfair competition ;
- 2° copyrights and related rights which apply to literary, artistic and scientific works, to performances of performing artists, phonograms, and wireless broadcasting .

SECTION 2: DEFINITION OF TERMS

Article 5: Definitions of terms applicable to industrial property

For the purposes of the provisions of this Law:

- 1° **“act of unfair competition”**: any act or practice which, in the exercise of industrial or commercial activities, is unlawful or contrary to honest use;
- 2° **“patent”**: title issued to protect an invention;
- 3° **“Utility model certificate”**: title issued to protect a technical innovation or utility model;
- 4° **“integrated circuit”** : product, in its final or an intermediate form, in which the elements, at least one of which is active, and all or part of the interconnections form an integral part of the body or surface of a component which is intended to carry out an electronic function;
- 5° **“industrial design and model”**: a design shall be any assembly of lines or colours, and any plastic shape, associated with lines or colours or otherwise, shall be a model, provided that this assembly or shape gives a special appearance to an industrial or craft product and may serve as a model for the manufacture of an industrial or craft product;
- 6° **“geographical indication”** : indication which is used to identify the origin of a product as from the province, region or an area of the country, in case where its quality, reputation or any other particular feature of the product may be attributed essentially to this its origin;
- 7° **“invention”**: idea of a creator “a creator of invention or inventor” which, in practice, provides the solution to a particular technical problem. An invention may consist of, or relate to, a product or a process;

- 8° **“innovation or utility model”**: idea of a creator “a creator of the utility model or an innovator” which, in practice, provides the solution to a particular problem in the technical field. It is an invention of a lower inventive level that does not meet the rigorous criteria of a patentable invention. An innovation (or utility model) may consist of, or relate to, a product or a process;
- 9° **“license contract”** : contract through which the industrial property right holder (licensor) grants any natural or legal person (licensee) the authorization to carry out, in the Republic of Rwanda and with regard to the industrial property right, any one of the acts that constitute the use of industrial property right as referred to in this Law. The license contract may be exclusive, semi exclusive or non exclusive ;
- 10° **“exclusive license”**: license contract that confers on the person (licensee) the right to exploit the licensed industrial property right to the exclusion of all other persons, including the right owner;
- 11° **“non exclusive license”**: license contract that confers on two or many persons the right to exploit the licensed industrial property right;
- 12° **“compulsory license”**: authorization to use a patented invention, industrial design or a layout design, granted to a third party by the Minister without the agreement of the right owner;
- 13° **“ex-officio compulsory licence”**: authorization to use a patented invention by public authorities or granted to a third party by Rwandan Government without the agreement of the right owner;
- 14° **“semi exclusive license”**: license contract that confers on the person (licensee) the right to exploit the licensed industrial property right to the exclusion of all other persons, except the right owner;
- 15° **“mark”** : visible sign enabling the products “product mark” or services “service mark” of one company to be distinguished from those of other companies;
- 16° **“collective mark”**: visible sign designated as such in the registration application and allowing the origin or any other common feature to be distinguished, including the quality of products or services of different companies that use this sign under the supervision of the owner of the collective mark registration;
- 17° **“certification marks”** signs or combination of signs capable of designating any common characteristic, including quality, origin or methods of production, of goods and services and which are used under the control of the owner of the signs.
- 18° **“trade name”**: name or designation identifying and distinguishing the company of a natural person from a legal person;
- 19° **“layout design”** : three-dimensional arrangement –in whatever form– of the elements, at least one of which is active, and of all or part of the interconnections of an integrated circuit, or such a three-dimensional arrangement, prepared for an integrated circuit intended to be manufactured;

20° **“Minister”**: the Minister in charge of industry.

Article 6: Definitions of terms applicable to copyrights and related rights

For the purposes of provisions of this Law:

- 1° **“performing artists”**: actors, singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore;
- 2° **“author”**: natural person who created work;
- 3° **“communication to the public”** : the transmission with or without wires images, sound, or both, of a work, a performance, a song or a phonogram in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and at different times individually chosen by them;
- 4° **“compilation”** : work arising from any choice or arrangement of a whole or a part of literary, dramatic, musical or artistic work or data;
- 5° **“to circumvent technological protection measures”**: to avoid, suspend the use of or destroy such measures; and such include the descrambling a scrambled work or other work from related rights and decrypting an encrypted work or object of related right;
- 6° **“public performance contract”** : contract by which the author of a work of mind or the right owner grants authorization to physical person or legal entity of making public performance of the aforesaid work on conditions that the contracting parties shall determine;
- 7° **“copy”**: result of any act of reproduction;
- 8° **“copy of a phonogram”**: medium containing directly or indirectly fixed sounds from a phonogram and that incorporates the whole or substantial part of fixed sounds on this phonogram;
- 9° **“public domain”** : set of works that can be used by whoever without authorization of the author, either because of the end of the period of protection, either because of the absence of international instrument assuring their protection in the case of the foreign works;
- 10° **“related rights”**: copyrights of artist performers, producers of phonograms or of broadcasting organizations without wires;

11° **“expression of folklore”**: group-oriented and tradition-based creation of a community or individuals developed and perpetually exercised on the territory of Rwanda, reflecting the expectation of the folk arts of such a community. These are:

a) folktales, folk poetry, and folk riddles;

b) folk songs and instrumental folk music;

c) folk dances and folk plays;

d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metalware, jewelry and indigenous textiles;

12° **“fixation”**: embodiment of sounds, images or both or of their broadcasting for their emission, reproduction or communicated through a device;

13° **“exclusive license”** : license contract by which the right owner grants authorization to any person to carry out, in such manner that is allowed to him, relevant acts of use of his economic rights referred to in the license contract, to the exclusion of any other person including the rights’ owner ;

14° **“non exclusive license”** : license contract by which the right owner grants authorization to two or several persons to carry out, in such manner that is allowed to him, relevant acts of use of his economic rights referred to in the license contract;

15° **“rental”**: transfer of the possession of the original or the copy of a work or phonogram for a limited period of time for profit-making purposes;

16° **“technological protection measures”**: technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works or objects of related rights, which are not authorized by the right holder;

17° **“work”**: literary, artistic or scientific work;

18° **“anonymous work”**: work revealed without indicating the name or pseudonym of the author;

19° **“audiovisual work”** : 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;

20° **“collective work”** : work created by several persons, represented by an individual or an a legal entity which is declared on their own behalf; and that the identity of the contributing in its work shall not be separated in the manufacture of the work such that no person can understand the role of each individual and their names;

21° **“work of applied art”**: artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

22° **“work of joint authorship”**: work to the creation of which two or more authors have contributed;

23° **“derivative work”**: work created on basis of one or several pre-existing works;

24° **“inspired work from folklore”**: work exclusively created on basis of the elements borrowed to the Rwandan folklore;

25° **“photographic work”** : recording of light or other radiation on any medium on which an image is produced or from which an image may be produced through chemical, electronic means or any other object in the manufacture of such a picture;

26° **“posthumous work”**: work published after the author's death;

27° **“pseudonymous work”**: work published under a supposed name;

28° **“published work”**: copies of a work or a phonogram which were submitted to the public on consensus with the author, if it is a work, or upon consensus with the successor of fonogram works if it is fonogram in selling, renting, lending or or transferring them in any way with an aim of satisfying the market, including the case when the copies were submitted to the public by means of electronical retrieval;

29° **“work first published in Rwanda”**: work whose first publication took place in Rwanda, or a work whose first publication took place abroad and its publication in Rwanda took place within thirty days (30) following that first previous publication; in those cases, these two publications are considered to be simultaneous;

30° **“phonogram”** : fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in audiovisual work;

31° **“producer of an audiovisual work”**: natural person or legal entity that undertakes the initiative and responsibility for the making of an audiovisual work;

32° **“phonogram producer”**: physical person or legal entity, who, at the first time, fix the sounds of a performance or of other sounds, or of a representation of sounds;

33° **“computer program”** : instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer or any electronic device having information-processing capabilities to perform or achieve a particular task or result;

34° **“broadcasting”**: communication of a work, a performance or a phonogram to the public by wireless transmission by means of radio electrical waves, including transmission by satellite;

35° **“rebroadcasting”**: new broadcasting by a broadcasting organization of its own broadcast or broadcast of another broadcasting organization;

36° **“to perform”** work is to recite, play, dance, act or otherwise to perform this work, either directly or by means of any device or process, or in the case of an audiovisual work or phonogram, to show images in sequence and make the accompanying sounds audible, or make the recorded sounds audible;

37° **“public performance”**: 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, it is the showing of its images in sequence or making its accompanying sounds audible, and in the case of a phonogram, making the recorded sounds audible, in each case at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and/or times, and where the performance can be perceived without the need for communication to the public.

38° **“reproduction”** : the making of one or more copies of a work or phonogram, or a part of both, in any manner or form, including recording of sounds and images , permanent or temporary storage of the work or phonogram in electronic form;

39° **“reprographic reproduction of a work”**: the making of copies in facsimile of original or of copies of the work by means other than painting; reducing or enlarging in facsimile are also considered to be a reprographic reproduction.

TITLE II: APPLICATION OF THIS LAW; ADMINISTRATION OF INTELLECTUAL PROPERTY

CHAPTER ONE: APPLICATION OF THIS LAW

Article 7: Scope of application of this Law to industrial property

The provisions of this Law shall apply to:

- 1° nationals of the Republic of Rwanda, or any person or legal entity who have their habitual residence or headquarters in Rwanda, or have real and effective industrial or business establishments located in Rwanda ;
- 2° nationals of any country party to Paris Convention on the protection of industrial property and nationals of any country member of World Trade Organisation (WTO);
- 3° nationals of countries not party to Paris Convention on the protection of industrial property and nationals of countries not member of World Trade Organisation (WTO), who are domiciled or who have real and effective industrial or business establishments in the territory of one of the countries party to Paris Convention or member of World Trade Organisation (WTO).

Any person who are not in one of the categories referred to in paragraph one of the this article may be entitled to protection granted by this Law taking into account the interest of their creation for Rwanda or insofar as their country of origin or in which they are domiciled grants same equivalent protection to nationals of Rwanda.

Article 8: Scope of application of this Law to copyrights

The provisions of this Law concerning the protection of literary, artistic and scientific works shall apply to:

- 1° works of authors or any other entitled person who are nationals of the Republic of Rwanda, or have their habitual residence or headquarters in Rwanda;
- 2° audiovisual works, the producer of which is national of the Republic of Rwanda or has his habitual residence or headquarters in Rwanda;
- 3° works first published in Rwanda;
- 4° works of architecture erected on the territory of the Republic of Rwanda and other artistic works incorporated in a building located on the Rwandan territory.
- 5° works that are eligible for protection in Rwanda by virtue of and in accordance with Bern Convention or other international treaty to which the Republic of Rwanda is party.

Works that are not mentioned in paragraph one of this article may be entitled to protection granted by this Law insofar as their country of origin or in which they are domiciled grants equivalent protection to artistic works from.

Article 9: Scope of application of the law regarding related rights

The performances are protected by the provisions of this Law where:

- 1° the performer is a national of the Republic of Rwanda;
- 2° performing takes place on the territory of the Republic of Rwanda;
- 3° performances are incorporated in phonograms that are protected under this Law;
- 4° performances that have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Law.

Producers of phonograms shall be protected by the provisions of this Law where:

- 1° the producer of phonograms is a national of the Republic of Rwanda;
- 2° The first fixation of sounds on phonograms took place in Rwanda; and
- 3° The first publication of the phonograms took place in Rwanda.

The provisions of this Law on the protection of broadcasts shall apply to where:

- 1° Headquarters of the broadcasting organization are situated in Rwanda; and
- 2° broadcasts are transmitted from transmitters situated in Rwanda.

Performing, producing, phonograms and wireless broadcasting shall be protected in accordance with international conventions to which the Republic of Rwanda is party.

The protection of performances, phonograms and broadcasts shall not be, in any such manner, considered as either limiting or causing prejudice to protection of copyrights.

CHAPTER II: ADMINISTRATION OF INTELLECTUAL PROPERTY

Article 10: Administration of intellectual property

- 1° Ministry in charge of industry;
- 2° Ministry in charge of copyrights and cultural matters;
- 3° Intellectual property organ.

Article 11: The responsibilities of the Ministry in charge of industry

The Ministry in charge of industry is responsible for the following:

- 1° to set up a policy related to the promotion of intellectual property;
- 2° to set up orders related to the application of this Law;
- 3° to supervise the organ in charge of intellectual property.

Article 12: The responsibilities of the Ministry in charge of copyrights and cultural matters

Subject to the provisions of the article 10 of this Law, the Ministry in charge of culture matters shall be responsible for the following:

- 1° to protect the moral rights in relation with copyrights;
- 2° to promote and to provide services to artists and performers;
- 3° to promote and to protect the national culture and heritage and to carry out decrees provided by this Law.

Article 13: The responsibilities of the Intellectual property organ

The daily management of intellectual property falls to the empowered authority provided by the law.

The empowered authority is responsible for:

- 1° granting authentic industrial property titles provided by this Law;
- 2° carrying out all tasks provided by this Law including the registration of applications for titles of intellectual property, publishing, calculating and extending their deadlines and duration, and managing all related matters.
- 3° promoting the spirit of creativity and technological innovation for nationals of the Republic of Rwanda and any person who owns an effective and serious industrial or commercial institution;
- 4° encouraging the inventive activity and creation of new technologies and their industrial or commercial use, in the Republic of Rwanda, so as to promote economic growth and improvement of the life conditions of Rwandan people;
- 5° providing economic operators, industrialists, researchers and the general public with technical information services on patents, utility models and other technical matters in order to facilitate the evaluation, selection, acquisition and assimilation of foreign and domestic technologies by industrial companies and research institutions located in the Republic of Rwanda;
- 6° increasing national technological capacity by strengthening national powers in the negotiation and conclusion of industrial property and technology transfer license agreements;
- 7° guaranteeing the free and honest exercise of industrial and commercial activities through the prevention and elimination of acts of unfair competition in relation to industrial property.
- 8° to assure a better utilization, a free and fair economic use of works;
- 9° to assure equitable remuneration and a just distribution of dividends arising from use of works;
- 10° to develop and promote cultural industry and printing industry in Rwanda.
- 11° to monitor activities of private institutions that manage jointly copyrights and related rights;
- 12° to arbitrate all disputes arising from intellectual property.

PART II: PROTECTION OF INDUSTRIAL PROPERTY

TITLE ONE: PROTECTION OF TECHNICAL CREATIONS

CHAPTER ONE: PATENTS OF INVENTION

SECTION ONE: PATENTABILITY OF INVENTION

Article 14: Patentable invention

An invention shall be patentable if:

- 1° it is new;
- 2° it involves an inventive step; and
- 3° it is industrially applicable.

Article 15: Novelty of an invention

An invention shall be new, if it is not anticipated by the prior art.

The prior art shall consist of everything that has been disclosed, anywhere in the world, by publication in tangible form, by oral disclosure, by use or in any other way, prior to the filing date or, where appropriate, the priority date of the application claiming the invention.

In accordance with paragraph (2) of this article, a disclosure of the invention shall not be taken into consideration, if it occurred within 12 months preceding the filing date or, where appropriate, the priority date of the application, and if it has resulted directly or indirectly from acts committed by the applicant or his legal predecessor, or from a violation committed by a third party with regard to the applicant or his legal predecessor.

Article 16: Activity of Invention

An invention shall be considered as an activity of invention if, for a person skilled in the art and involved in that area, it is obvious there is a progress from the prior art compared to the patent application in which the invention is claimed, as defined in article 14 (2).

Article 17: Industrial applicability

An invention shall be considered industrially applicable, if its subject matter can be made or used in any kind of industry. The term “industry” shall be understood in its broadest sense, as any human economic activity leading to the production of goods and services and shall cover, in particular, handicrafts, agriculture, fishery and services.

Article 18: Matters excluded from patent protection

The following shall be excluded from patent protection even if they constitute inventions under article 5 (7): of this Law;

- 1° discoveries, scientific theories and mathematical methods;
- 2° schemes, rules or methods for doing business, performing purely mental acts or playing games;
- 3° methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; nevertheless, this provision shall not apply to products for use in any of those methods;
- 4° substances, even if purified, synthesized or otherwise isolated from nature; nevertheless, this provision shall not apply to the processes of isolating those substances from their original environment;
- 5° known substances for which a new use has been discovered; this provision shall not apply to the use itself, where it constitutes an invention under article 5(7) of this Law;
- 6° plants and animals, including their parts, other than micro-organisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes and products obtained from those processes;
- 7° animal and plant varieties;
- 8° pharmaceutical products, for the purposes of international conventions to which Rwanda is party;
- 9° inventions whose commercial use is contrary to public order and to morality.

The provisions of paragraph one of this article shall not apply to the following inventions:

- 1° process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program; and
- 2° product inventions consisting of elements of a computer-implemented invention, including in particular:
 - a) machine-readable computer program code stored on a tangible medium such as a floppy disk, or any kind of disks or computer memory; and
 - b) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

The applicant who has filed patent applications for computer programs and computer-related inventions listed in paragraph (2) of this article has waived from his right of seeking copyright protection.

SECTION 2: PATENT OWNERSHIP

Article 19: right to patent

The right to a patent shall belong to the inventor. The right to the patent is a personal property and may be transferred or assigned by means of succession.

The right to the patent may be subject to security or mortgaged.

Article 20: Invention made by several persons; first applicant principle

Where two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

Where the invention has been carried out by two or more persons, the use of the patented invention by one of the owners shall not require the agreement of the other owners. However, the owners may only conclude jointly license agreements relating to the patent.

Particularly, where two or more persons have carried out the same invention independently of each other, the right to the patent shall belong to the person whose filing date or, where priority is claimed, the validly claimed priority date, is the oldest, as long as said application has not been withdrawn, abandoned or rejected. The establishment of the right of preference shall be based on the matter claimed in the application.

Article 21: Invention carried out as part of an employment contract

If the invention has been carried out as part of an employment contract, the right to the patent for this invention shall belong to the employer, unless otherwise stipulated in the contract.

Where an invention has an economic value that is much higher than that which the parties could reasonably foresee at the time the contract is concluded, the inventor shall be entitled to equitable remuneration taking into account the value of his invention.

Where an employee who is not obliged by his employment contract to carry out an inventive activity produces, in his employer's field of activities, an invention by using the data, or means and know-how available to him through his employment, the right to the patent for this invention shall belong to the employee. Nevertheless, in the case the employer makes known his interest in that invention, he may request for the grant of all or part of the right to the patent protecting the invention of the employee in accordance with the agreement between the parties.

Where there is no agreement between the employee and the employer, according to paragraph (2) and (3) of this article, the remuneration shall be fixed by the competent tribunal.

Any contractual provision that is less favourable to the employee than these provisions shall be invalid. Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this article shall be without legal effect.

The provisions of this article shall apply to public civil servants as well as to persons whose services are hired in accordance with the code of civil, administrative and commercial procedures of Rwanda.

Article 22: Naming of the inventor

The inventor shall be named as such in the patent unless, in a special written declaration addressed to the empowered authority, he indicates that he wish not to be named.

Any promise or undertaking to make such a declaration, made with regard to any person by the inventor, shall have no legal effect.

SECTION 3: PATENT APPLICATION

Article 23: Filing the application

Patent application shall be filed with the empowered authority. The application shall contain:

- 1° a request for the grant of a patent;
- 2° a description of the invention;
- 3° one or more claims in the invention;
- 4° one or more drawings (where necessary);
- 5° an abstract.

The filing of the application shall be subject to payment of the prescribed fee.

The applicant may, until such time as it is observed that the application meets the requirements for the grant of the patent, withdraw the application at any time during its pendency. Where the application has been withdrawn a subsequent application can be filed in Rwanda in respect of the same invention. Such subsequent application shall be regarded as the first application in respect of that invention. No priority rights shall be claimed on the withdrawn application after the lodging of the subsequent application

Article 24: Request for the grant of a patent

The request for patent shall contain:

- 1° a application letter requesting for the grant of a patent;
- 2° the name, address and other prescribed information relating to the applicant and to the inventor;
- 3° the information relating to the representative, where appropriate;
- 4° the title of the invention.

Where the applicant is not the inventor, the request shall be accompanied by a declaration providing proof of the applicant's right to the patent.

Article 25: Description of the invention

The description shall, subject to being declared invalid, explain and disclose the invention in a manner sufficiently clear, complete and intelligible so as to be used by a person skilled in the art and involved in that area. It shall indicate the best way to use the invention known to the applicant at the filing date or, where priority is claimed, at the priority date of the application. Where necessary, drawings shall be provided to understand the invention.

The disclosure of the claimed invention shall be considered sufficiently clear and complete if it provides information which is sufficient to allow that invention to be used by a person skilled in the art on the filing date, without undue experimentation. For the purposes of assessing sufficiency of disclosure, the disclosure contained in the description, claims and drawings, as established on the date in which the sufficiency of disclosure was examined, shall be taken into account.

In accordance with provisions of this article, a person having ordinary skill in the art is understood as a citizen of Rwanda, or any person with habitual residence located in Rwanda, who has studied and carries out his profession in Rwanda, having acquired an average expertise and experience in the technical field of the claimed invention.

The empowered authority may, at any time before the grant of the patent, require the description in foreign patent applications to be adapted to the ordinary skill in the art of the citizens of Rwanda, or any person with habitual residence in Rwanda and carries out his profession in Rwanda, so as to ensure technology transfer and dissemination.

Article 26: Claims

The claims shall define the scope of the desired protection and the protection for an invention shall be determined by the extent of the content of the claims.

The claims shall be clear and concise; they shall be based entirely on the description. The description and drawings may be used to interpret the claims.

Article 27: Abstract

The abstract is the summary of an inventory work and it shall be used exclusively for technical information purposes. It shall not be taken into consideration when assessing the scope of protection.

Article 28: Unity of invention

The application may relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

The fact that a patent has been granted on the basis of an application not satisfying the rule of unity of invention shall not serve as grounds for cancelling the patent.

Article 29: Amendment and division of the application

Until such time as it is observed that the application meets the requirements for the grant of the patent, the applicant may amend the application, but the amendment may go beyond the disclosure as it appears in the original application.

Until such time as it is observed that the application meets the requirements for the grant of the patent, the applicant may divide the application into more than one application, known as “divisional applications”, but no divisional application may go beyond the disclosure as it appears in the original application. Each divisional application shall enjoy the filing date and, where appropriate, the priority date of the original application.

Article 30: Right of priority

The application may contain a declaration in which is claimed, in accordance with Paris Convention or a bilateral, regional, or multilateral convention to which the Republic of Rwanda is party, priority for one or more previous national, regional or international applications, filed by the applicant or by his legal predecessor in one, or for any, State party to Paris Convention and/or World Trade Organization or party to the applicable convention.

Consequently, the filing in Rwanda of that application before the expiration of the period of priority shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, and such acts cannot give rise to any third-party right or any right of personal possession.

The period of priority under paragraph (1) of this article is of twelve (12) months for any State party to Paris Convention and/or member of World Trade Organization.

Where the application contains the declaration claiming priority, the empowered authority may request the applicant to supply him, within the prescribed time limit, with a copy of the previous application, certified as true by the Industrial Property Authority with which it has been filed, together with the translation of this application where necessary. The empowered authority shall accept the form and the content of the certification mentioned as determined by the certifying authority.

The declaration claiming priority shall indicate the date and number of the previous application as well as the State(s) where it has been filed. The effect of said declaration shall be that provided for by the Paris Convention or any other applicable convention.

If the empowered authority observes that the requirements provided for in this article and the related administrative regulations have not been satisfied, said declaration shall be considered not to have been filed.

Article 31: Information relating to corresponding foreign applications

The applicant shall indicate to the empowered authority the date and number of any patent application or other title of protection filed by him or by his legal predecessor abroad, known as “foreign application”, and which relates to the same invention, or essentially to the same invention, as that which is claimed in the application filed in Rwanda.

In order to facilitate the evaluation of novelty and inventive step as regards the claimed invention, the applicant shall supply the to the empowered authority with the following documents relating to one of the foreign applications referred to in paragraph (1) of this article:

- 1° a copy of any communication received by the applicant concerning the results of any search or examination carried out in relation to the foreign application;
- 2° a certified or ordinary copy of the patent or other title of protection granted on the basis of the foreign application;
- 3° a copy of any final decision rejecting the foreign application or refusing the grant required in the foreign application.

The applicant shall furnish the empowered authority with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in paragraph (2) of this article.

SECTION 4: EXAMINATION; GRANT OF THE PATENT

Article 32: According the filing date

The empowered authority shall accord, as the filing date, the date of receipt of the application. The application shall contain:

- 1° an indication that the grant of a patent is sought;
- 2° information allowing the identity of the applicant to be established;
- 3° a part which, on the face of it, appears to be a description of an invention;
- 4° one or more claims identifying the characteristic elements of the invention.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph (1) of this article have not been satisfied, he shall invite, within a period of seven (7) days, the applicant to file the required correction.

Where the applicant complies with the invitation referred to in paragraph (2) of this article, the empowered authority shall accord, as the filing date, the date of receipt of the required correction. Where the corrections required are drawings and have not been made, the empowered authority shall accord the application the first filing date. In that case, any application based on drawings shall be treated as non-existent.

Article 33: Examination

After according a filing date, and having the invention classified according to the International Classification, the empowered authority shall examine whether the application complies with the requirements of articles 23 and 24, and the provisions of the administrative regulations pertaining thereto, as well as the other requirements of this Law and relevant

administrative regulations which, under this Law, constitute formal requirements, and shall examine whether information specifically requested under articles 30 and 31 if any, has been provided.

If the empowered authority finds that the requirements of paragraph (1) of this article have not been satisfied, he shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation, the application shall be considered withdrawn; if the correction relates to the declaration of priority, the right of priority shall be lost.

Where the empowered authority is of the opinion that the application complies with the formal requirements of the paragraph (1) of this article, he shall take a decision as to whether the requirements of articles 14 to 18, 25 and 26 and the administrative regulations pertaining thereto and cause, if appropriate, the application to be examined as to substance. For the purposes of examination as to substance, the empowered authority shall take into account:

- 1° the results of any international search report and any international preliminary examination report established under the Patent Cooperation Treaty in relation to the application filed in Rwanda; and/or
- 2° the results of any search and examination report and any decision submitted under article 31 of this Law; and/ or
- 3° the results of any search and examination report which was carried out upon his request by an external search and examination authority or by a specialized agency of the Government of Rwanda.

Article 34: Grant of the patent

Where the competent authority finds that the formal requirements of article 32 have been satisfied, it shall grant the patent. In the opposite case, he shall reject the application and shall notify the applicant of that decision in writing in a period provided by international conventions to which Rwanda is party.

When granting a patent, the empowered authority shall:

- 1° publish a reference to the grant of the patent and its abstract;
- 2° issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- 3° record the patent in the register of patents;
- 4° make available copies of the patent to the public, on payment of the fee determined by the Minister.

Article 35: Amendments of the application for patent

The empowered authority shall, upon request of the patent owner, make amendments to the patent text or drawings, intended to limit the scope of the protection conferred hereby, provided that as a result of these amendments the disclosure made in the patent does not go

beyond the disclosure made in the original application, on the basis of which the patent has been granted. Otherwise those amendments shall be without effect.

Article 36: Invalidation of a patent

Any interested person may request the competent court to invalidate a patent.

The competent court shall invalidate the patent if the person requesting the invalidation proves that one of the requirements of paragraph (2) and (8) of article 5, articles 14 to 18, 25 and 26, has not been satisfied, or if the patent owner is not the inventor or his rightful claimant.

When the grounds for invalidation are established with respect only to a part of the invention, only the corresponding claim or claims shall be invalidated.

Any invalidated patent, or any claim, or part of claims thereof, shall be regarded as null and void from the date of the grant of the patent and shall be deemed as if it had never been granted.

The final decision of the competent court shall be notified to the empowered authority which shall record it in the register of patents and shall publish a reference thereto within a period of thirty (30) days.

Article 37: Transfer of patent

In the event a dispute over the rights relating to the patent arises, the interested person who won the case may ask the competent tribunal to transfer the title to him instead of invalidating it.

SECTION 5: RIGHTS CONFERRED BY THE PATENT AND ITS DURATION

Article 38: Rights conferred by the patent

The patent shall confer on the owner the exclusive right to use an invention in the Republic of Rwanda. The use of the patented invention by any person other than the patent owner shall require the owner's consent.

In this Law, "use" of a patented invention shall mean any of the following acts:

1° where the patent has been granted in respect of a product:

- a) making, importing, offering for sale, selling and using the product;
- b) stocking such product for the purposes of offering it for sale, selling it or using it;

2° where the patent has been granted in respect of a process:

- a) using the process;
- b) carrying out the acts referred to in paragraph 2(1) of this article above as regards a product resulting directly from the use of the process;

Article 39: Civil proceedings against patent infringement

Subject to articles 40, 41 and 46 to 48, the patent owner shall be entitled, in addition to other rights, remedies or actions available to him, to undertake court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in article 38 (2), or who performs acts which make it likely that infringement will occur.

Where more than one person own the same patent, each of those persons may undertake separate proceedings for infringement of the patent against any person using the patented invention without the agreement of all the owners.

Article 40: Limitation to patent rights: exhaustion of rights

The rights stemming from the patent shall not be extended to the acts relating to products which have been put lawfully on the market, in Rwanda, by the patent owner or with his consent, consequently exhausting the patent owner's rights.

Without prejudice to the provisions of this article and article 44, the Minister shall have the authority, on of the empowered authority's advice or at the request of any interested party, of declaring the patent rights exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention ("the product") from another territory when that product:

- 1° is not available in the territory of Rwanda;
- 2° available in the territory of Rwanda does not respect the required standards;
- 3° can not be available in sufficient quantities;
- 4° has the price that the minister finds unfair;
- 5° for any other reason of public interest, including anticompetitive practices.

In taking the decision, the following shall be considered:

- 1° the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent or with his consent; and
- 2° a patent claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent in Rwanda or by a person under his control.

If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted, the Minister shall, ex officio, or at the request of the patent owner, cancel the authorization.

If the conditions that gave rise to the Minister's decision to consider the patent exhausted cease to exist, the Minister may, ex officio or at the request of the patent or trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

Article 41: Other limitations to patent rights

The rights stemming from the patent shall not be extended to:

- 1° the use of the patented invention on board foreign machines, vessels, vehicles and spacecraft which temporarily or accidentally enter the airspace, waters or territory of the Republic of Rwanda;
- 2° the acts relating to a patented invention carried out for scientific and technological research purposes and for public non-profit use;
- 3° the acts performed by any person who, in good faith and on the filing date or, where priority is claimed, on the priority date of the application on the basis of which the patent is granted, was using the invention or was making effective and serious preparations to use it, insofar as these acts do not differ, in their nature or purpose, from previous effective or envisaged use.

The right of the prior user referred to in paragraph 1(3) of this article may be transferred or devolve only to the enterprise or business, or part thereof, in which the use or preparations with a view to use took place.

It is not an infringement of a patent for any person where the use, manufacture, construction or sale of the patented invention is justified only insofar as it is necessary for the preparation and production of the information file which must be provided according to a domestic or foreign law governing the manufacture, construction, use or sale of a product.

Article 42: Duration of the patent and its renewal

Subject to the provisions of paragraphs (2), (3) and (4) of this article, the patent shall lapse twenty (20) years after the filing date of the patent application.

In order to maintain the patent or patent application in force, an annual fee shall be paid in advance to the empowered authority, for each year, the first being paid one year after the filing date of the patent application. A grace period of six (6) months shall be granted for payment of the annual fee after the deadline, in return for payment of the prescribed surcharge.

All fees stipulated in this article shall be determined by a ministerial order.

Where an annual fee is not settled in accordance with the provisions of this article, the patent application shall be considered to have been withdrawn or the patent shall lapse.

SECTION 6: ASSIGNMENT; CONTRACTUAL LICENSE

Article 43: Patent assignment

The patent may be assigned, by contractual arrangement, by the patent owner to any interested person. The assignment contract shall be drawn up in writing and shall be signed by the parties to the contract.

The transfer of patent ownership shall be submitted to the empowered authority for:

- 1° recording in the register of patents;
- 2° publication of details of the change in patent ownership.

Recording of transfer of patent ownership shall be subject to payment of the prescribed fee.

Any change in patent ownership shall have effect in relation to third parties only after recording into the register of patents.

Where two or more persons own the same patent, each of them may assign or transfer separately, by means of succession, his share in the patent.

The empowered authority may refuse to record a contract for the transfer (assignment) of ownership when he decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority may hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any X decision to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days from the notification of the decision to the person concerned.

Where the appellant is not satisfied by the appealing committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appealing committee's decision.

For the purposes of the provisions of this article, any limitations imposed on the assignee that do not derive from the rights conferred by the registration of the right, and that are not necessary for the safeguard of that right shall be deemed abusive or anti-competitive in the event that they have anti-competitive effects.

The patent assignment contract will cease immediately to produce effects after invalidation of the patent by tribunals.

Article 44: Contractual license

The owner of a patent may, by contractual arrangement, grant a license to use his invention to another natural or legal person. The license contract shall be drawn up in writing and shall be signed by the parties to the contract.

The license contract shall be submitted to the empowered authority which shall keep the content secret.

Recording of the license contract in the register of patents by the empowered authority shall be subject to payment of the prescribed fee for the publication of the license contract.

Any license contract shall be valid once recorded in the register of patents.

Patent license withdrawing shall be subject to the invalidation of the patent or on a request of one of the parties to the contract and shall result from:

- 1° cancellation of the license contract;
- 2° invalidation of the patent by the courts;

When a license contract is concluded, the patent owner shall continue to enjoy the rights granted to him by this Law. The patent owner may conclude other patent licenses, unless otherwise stipulated in the contract, in particular where the license contract provides that the license is exclusive.

The authorization granted to the licensee shall extend to the performance, in relation to the patented invention, of all acts constituting use of the invention, in accordance with article 37 of this Law.

The license contract may be exclusive, semi exclusive or non exclusive.

The licensee shall not be authorized to conclude license agreements with third parties, in relation to the patented invention which is the subject of the license.

Article 45: Control of anti-competitive practices in contractual licenses

In order to guarantee free and honest practices in the exercise of industrial and commercial activities, the empowered authority shall examine, at the time the license contracts are registered, whether certain practices or conditions limit competition or may have prejudicial effects on trade and hamper the transfer and dissemination of technology.

The empowered authority may adopt appropriate measures to prevent or control license issue practices which may include exclusive reassignment clauses, conditions preventing the dispute of validity and a coercive grouped licenses regime.

The empowered authority shall examine in particular whether the clauses of the contract do not oblige the licensee to pay fees for an invention not used or not patented, or to pay enormous sums in fees, even before the invention is used.

The empowered authority shall examine whether the license contract does not oblige the licensee to import raw materials, intermediate goods or equipment from the licensor, even without the guarantee of quality and profitability of the goods to be produced.

The empowered authority shall verify the clauses of the contract license, the effect of which is to prevent by excessive means the export of the goods made by the licensee, and which

authorize the export in return for enormous fees or limit the licensee's competitive opportunities on the domestic and foreign market.

Consequently, the empowered authority may refuse to record a license contract when he decides that the contract concerning the right in question contains one or more clauses that are abusive, or anti-competitive or in any manner restrain trade, or limit access to technology or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request. Those allegations shall take into account evidence that is pertinent. Any decision to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days from the date on which the owner was notified the empowered authority's decision.

Where the appellant is not satisfied by the appealing committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appealing committee's decision.

For the purposes of the provisions of this article, any limitations imposed on the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

SECTION 7: NON-CONTRACTUAL LICENSES

Sub-section one: Licenses as of right

Article 46: Procedures for grant of licenses as of right

At any time, following the grant of a patent, the owner may submit a request to the empowered authority for inclusion in the register of a reference in relation to the availability of "licenses as of right".

The inclusion of a license as of right shall grant any natural or legal person the right to obtain an operating license for the patent, subject to conditions which can be fixed by the empowered authority resulting from an agreement with the owner and the person applying for the license.

A license as of right shall not be included if a license contract has been previously registered, unless the licensee consents thereto.

Following the inclusion of the reference to a license as of right, the renewal fee shall be reduced by fifty per cent.

At any time following inclusion, the patent owner may submit a request to the empowered authority for removal of the inclusion of a license of right.

The empowered authority may withdraw the inclusion of a license as of right, if no other license exists or if all the licensees have consented to this request. The withdrawal is effected in return for the payment of a balance of all the renewal fees which would have been due if the inclusion had not been made.

From the date of the withdrawal of the inclusion of a license as of right, the rights of the patent owner shall be the same as if no inclusion had been made.

Sub-section 2: Compulsory license

Article 47: Conditions of compulsory license grant

The Minister may, **after listing the person who has obtained the license** and after consultation with the empowered authority **and after the decision of the Cabinet**, grant a compulsory license:

- 1° for the absence or insufficient nature of industrial or commercial use of a patented invention in the Republic of Rwanda. There is insufficiency of use where a patented invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Rwanda, either through manufacture in Rwanda or through importation;
- 2° if the owner of the patent is abusively exercising his exclusive rights or neglecting in taking measures to prevent his licensee from abusively exercising the licensed exclusive rights;
- 3° if the invention claimed in a “subsequent patent” cannot be used in Rwanda without infringing a “previous patent.”

Article 48: Compulsory license for absence or insufficient use

In the case of the absence or insufficient nature of industrial or commercial use of a patented invention, any natural or legal person who proves that he or she is able to make industrial or commercial use, in the Republic of Rwanda, of a patented invention, may address a request to the Minister for a compulsory license, following the expiry of a four-year (4) period from the filing date of the application, or three (3) years from the date of grant of the patent, the time limit which expires later being applied.

A compulsory license shall not be granted if pertinent circumstances exist which justify the absence or insufficient nature of industrial or commercial use of the patented invention.

Article 49: Compulsory license for abusive exercise of exclusive rights

Where there is abusive exercise of exclusive rights on patented invention, the Minister may grant, **after listing the person who has obtained the license** and after consultation with the empowered authority **and after the decision of the Cabinet** or at the request of any interested person, a compulsory license.

Article 50: Compulsory license in case of infringing use of previous patent by subsequent patent

If the invention claimed in a “subsequent patent” cannot be used in Rwanda without infringing a “previous patent,” the Minister can, **after listing the person who has obtained the license** and after consultation with the empowered authority **and after the decision of the Cabinet**, at the request of the owner of the subsequent patent, grant him an operating license for the previous patent. In such a case, the following conditions shall be respected:

- 1° the invention claimed in the subsequent patent shall represent significant technical progress and is of considerable economic interest in relation to the invention claimed in the previous patent;
- 2° if a compulsory license is granted under this article, at the request of the owner of the previous patent, the Minister, after consultation with the empowered authority, shall grant a compulsory license for using the claimed invention in the subsequent patent;
- 3° the compulsory license authorized in relation to the previous patent can be transmitted only with the subsequent patent;
- 4° the compulsory license authorized in relation to the subsequent patent can be transmitted only with the previous patent.

Article 51: Application and compulsory license grant

The request for a compulsory license shall be accompanied by proof that the patent owner has received from the requestor a contractual license request, but that the requestor has been unable to obtain such a license on reasonable commercial conditions and within a reasonable period provided by a ministerial order.

The request for a compulsory license shall be subject to payment of the prescribed fee.

The beneficiary of the compulsory license shall undertake to use the patented invention to a sufficient extent. The decision to grant the compulsory license shall specify the following:

- 1° the field of application and function of the license;
- 2° the period within which the beneficiary of the license shall begin to use the patented invention;
- 3° the amount of the appropriate remuneration to be paid to the owner of the patent and the payment conditions.

The decision to grant the compulsory license may be subject to appeal to the competent tribunal.

Sub-section 3: Ex officio compulsory license

Article 52: Conditions for ex officio compulsory license grant

The Government of Rwanda may decide that even without the agreement of the patent owner a State department or a third party appointed may, with appropriate remuneration, use the invention for the following reasons:

- 1° the public interest, in particular:
 - a) national security;
 - b) public health;
 - c) environment protection;

2° a decision of judicial organ or of the empowered authority has determined that the manner in which the patent owner or his licensee uses the invention is anti-competitive.

Article 53: Application and ex officio compulsory license grant

The request of a ex officio compulsory license shall be addressed to the Minister and shall be accompanied by proof that the patent owner has received, from the person seeking to obtain that authorization, a contractual license application but that this person has been unable to obtain this license according to reasonable commercial conditions and procedures, and within a reasonable period provided by a ministerial decree.

The provisions of paragraph (1) of this article shall not be applied in the case an ex officio compulsory license is granted for the following reasons:

- 1° in situations of national emergency or other extremely urgent circumstances;
- 2° the use of an invention for public interest is not lucrative;
- 3° in case of correction of anti-competitive practices.

Where an ex officio compulsory license is granted in accordance with the provisions of paragraph (2) of this article, the owner shall be notified the Government's decision within a period of thirty (30) days from the date on which it has been taken.

Use of the invention shall be limited to the purposes for which it has been granted and shall be subject to payment to said owner or his rightful claimant of appropriate **compensation**, taking into account the economic value of the Government's decision and, where the decision has been taken by a judicial organ or the empowered authority, taking into consideration the need to correct anti-competitive practices.

Subject to the provisions of paragraph (2) of this article, the Government's decision shall be taken after the patent owner and any interested person have been heard by the empowered authority if they wish to be heard.

For the purposes of article 52 of this Law, the use of the patented invention by the State department or the third party appointed by the Government shall aim mainly at supplying the market of the Republic of Rwanda, except when the license has been granted in order to correct anti-competitive practices.

The ex officio compulsory license granted for the use of a patented invention in the technical field of semi-conductors shall be authorized only for the use for public non commercial purposes or for correcting anti-competitive practices.

Article 54: Amendment and invalidation of an ex officio compulsory license

At the request of the State department or the third party authorized to use the patented invention, if one or both wish to be heard, the Government may, after the empowered authority has heard the parties, amend the terms of the decision authorizing use of the patented invention, insofar as a change of circumstances justifies such an amendment.

The Government shall terminate the authorization, after the empowered authority has heard the parties, if one or both of them wish to be heard, where it is satisfied that the circumstances which led it to take its decision have ceased to exist and will most probably not reoccur, or that the State department or third party appointed by it has not respected the terms of the decision.

Notwithstanding paragraph (2) of this article, the Government shall not terminate the authorization where it is satisfied that the retention of the decision is justified.

Article 55: Rights on ex officio compulsory license

The authorization by the government shall not exclude the conclusion of license contracts by the patent owner or the continuation of the exercise, by the patent owner, of his rights under article 37 of this Law or ex officio compulsory license.

Where a third party has been appointed by the Government, the authorization may be transferred only to the company or business of this person, or to the part of the company or business within which the patented invention is used.

The decisions taken by the Government under this article may be subject to appeal in the competent tribunal.

CHAPTER II: UTILITY MODEL CERTIFICATES

SECTION ONE: PROTECTION REQUIREMENTS OF UTILITY MODEL

Article 56: Utility model certificate suitable for protection

An innovation shall satisfy the requirements for a utility model certificate, provided that:

1° it is new; and

2° it is industrially applicable.

Article 57: Novelty of utility model

An innovation shall be new, if it is not anticipated by the prior art.

The level of technical knowhow shall consist of everything that has been disclosed, anywhere in the world, by publication in tangible form, by oral disclosure, by use of utility model or in

any other way, prior to the filing date to the empowered authority or, where appropriate, the priority date of the application claiming the invention.

In accordance with provisions of paragraph (2) of this article, a disclosure of the invention of utility model shall not be taken into consideration, if it occurred within twelve (12) months preceding the filing date of utility model or, where appropriate, the priority date of the application, and if it has resulted directly or indirectly from acts committed by the applicant or his legal predecessor, or from a violation committed by a third party with regard to the applicant or his legal predecessor.

Article 58: Industrial applicability of utility model

An innovation shall be considered industrially applicable, if its subject matter can be made or used in any kind of industry or any human economic activity leading to the production of goods and services.

Article 59: Matter excluded from utility model protection

The following shall be excluded from utility model protection even if they constitute innovations under provisions of paragraph 8 of article 5 of this Law:

- 1° discoveries, scientific theories and mathematical methods;
- 2° schemes, rules or methods for doing business, performing purely mental acts or playing games;
- 3° methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; this provision shall not apply to products for use in any of those methods;
- 4° natural substances, even if purified, synthesized or otherwise isolated from nature; this provision shall not apply to the processes of isolating those natural substances from their original environment;
- 5° known substances for which a new use has been discovered; this provision shall not apply to the use itself, where it constitutes an innovation (or utility model) under article 5(8) of this Law;
- 6° plants and animals, including their parts, other than micro-organisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
- 7° animal and plant varieties;
- 8° pharmaceutical products in accordance with the International Conventions to which Rwanda is party;

9° innovations whose commercial use is contrary to public order and to morality.

The provisions of paragraph (1) of this article shall not apply to the following inventions:

- 1° process innovations which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program; and
- 2° product innovations consisting of elements of a computer-implemented innovation, including in particular:
 - a) machine-readable computer program code stored on a tangible medium such as a floppy disk, or any kind of disks or computer memory; and
 - b) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

It is understood that applicants who have filed utility model applications for computer programs and computer-related innovations listed in paragraph (2) of this article have waived from their right of seeking copyright protection, if applicable.

SECTION 2: UTILITY MODEL OWNERSHIP

Article 60: Right to the utility model certificate

The right to a patent of utility model shall belong to the inventor. The right to the patent of utility model is a personal property and may be assigned or transferred by means of succession.

The right to the patent of utility model may be subject to security or mortgaged.

Article 61: Invention made by several persons; first applicant principle

Where two or more persons have jointly made an invention of utility model, the right to the patent shall belong to them jointly.

Where the invention of utility model has been carried out jointly by two or more persons, the use of the patented invention of utility models by one of the owners shall not require the agreement of the other owners. However, the owners of utility model may only conclude jointly license agreements relating to the patent of utility model.

Where and insofar as two or more persons have carried out the same invention of utility model independently of each other, the right to the patent shall belong to the person who has filed the application whose filing date or, where priority is claimed, the validly claimed priority date, is the oldest, as long as said application has not been withdrawn, abandoned or rejected. In order to establish the right of preference, the empowered authority shall take into account the matter claimed in the applications.

Article 62: Invention of utility model carried out as part of an employment contract

If the invention of utility model has been carried out as part of an employment contract, the right to the patent of utility model for this invention shall belong to the employer, unless otherwise stipulated in the contract.

Where an invention of utility model has an economic value that is much higher than that which the parties could reasonably foresee at the time the contract is concluded, the inventor shall be entitled to equitable remuneration taking into account the value of his invention.

Where an employee who is not obliged by his employment contract to carry out an inventive activity produces, in his employer's field of activities, an invention by using the data, means or know-how available to him through his employment, the right to the patent of utility model for this invention shall belong to the employee. Nevertheless, in the case the employer makes known his interest in that invention, he may request for the grant of all or part of the right to the patent protecting the invention of the employee in accordance with the agreement between the parties.

Where there is no agreement between the employee and the employer, according to paragraph (2) and (3) of this article, the remuneration shall be fixed by the competent tribunal.

Any contractual provision that is less favorable to the employee than these provisions shall be invalid. Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this article shall be without legal effect.

The provisions of this article shall apply to public civil servants as well as to persons whose services are hired in accordance with the Code of Civil, Administrative and Commercial procedures of Rwanda.

Article 63: Naming the inventor

The inventor shall be named as such in the patent of utility model unless, in a special written declaration addressed to the empowered authority, he indicates that he wish not to be named. Any promise or undertaking to make such a declaration, made with regard to any person by the inventor, shall have no legal effect.

SECTION 3: UTILITY MODEL CERTIFICATE APPLICATION

Article 64: Filing the application

Patent of utility model application shall be filed with the empowered authority. The application shall contain:

1° a request for the grant of a patent of utility model;

2° a description of the invention;

3° one or more claims;

4° one or more drawings, where necessary;

5° an abstract.

The filing of the application shall be subject to payment of the prescribed fee determined by a ministerial Decree related to the application of this Law.

The applicant may, until such time as it is observed that the application meets the requirements for the grant of the patent of utility model, withdraw the application at any time during its pendency. Where the application has been withdrawn a subsequent application can be filed in Rwanda in respect of the same invention. Such subsequent application shall be regarded as the first application in respect of that invention. No priority rights shall be claimed on the withdrawn application after the lodging of the subsequent application

Article 65: Request for the grant of a utility model

The request for the grant of an utility model shall contain:

1° a petition for the grant of a patent of utility model;

2° the name, address and other prescribed information relating to the applicant and to the inventor;

3° the information relating to the representative, where appropriate;

4° the title of the invention.

Where the applicant is not the inventor, the request shall be accompanied by a declaration providing proof of the applicant's right to the patent.

Article 66: Description of the innovation

The description of the innovation (or utility model) shall, subject to being declared invalid, explain and disclose the invention in a manner sufficiently clear, complete and intelligible for the invention to be carried out by a person having ordinary skill in the art. It shall indicate the best way to use the invention known to the applicant at the filing date or, where priority is claimed, at the priority date of the application. Drawings shall be provided where they are necessary to understand the invention of utility model.

The disclosure of the claimed invention of utility model shall be considered sufficiently clear and complete if it provides information which is sufficient to allow that invention to be made and used by a person skilled in the art on the filing date, without undue experimentation. For the purposes of assessing sufficiency of disclosure, the disclosure contained in the description, claims and drawings, as established on the date in which the sufficiency of disclosure was examined, shall be taken into account.

For the purposes of this article, a person having ordinary skill in the art is understood as a citizen of Rwanda, or any person with habitual residence located in Rwanda, who has studied

and carries out his profession in Rwanda, having acquired an average expertise and experience in the technical field of the claimed invention of utility model.

The empowered authority may, at any time before the grant of the patent of utility model, require the description in foreign patent applications to be adapted to the ordinary skill in the art of the citizens of Rwanda, or any person with habitual residence in Rwanda and carries out his profession in Rwanda, so as to ensure technology transfer and dissemination.

Article 67: Claims of novelty of a utility model

The claims of novelty of utility model shall define the scope of the desired protection and the protection for an invention of utility model shall be determined by the content of the claims of novelty of utility model.

The claims of novelty of utility model shall be clear and concise. The claims shall be based entirely on the description of the innovation. The description and drawings may be used to interpret the claims of novelty of utility model.

Article 68: Abstract

The abstract shall be used exclusively for technical information purposes; it shall not, in particular, be taken into consideration when assessing the scope of protection.

Article 69: Unity of innovation

The application may relate to one invention of utility model only or to a group of inventions so linked as to form a single general inventive concept of utility model.

The fact that a patent of utility model has been granted on the basis of an application not satisfying the rule of unity of invention of utility model shall not serve as grounds for canceling the patent of utility model.

Article 70: Amendment and division of the application for examination

Until such a time as it is observed that the application meets the requirements for the grant of the patent of utility model, the applicant may amend the application, but the amendment may not go beyond the disclosure of the description of the novelty of utility model as it appears in the original application.

Until such a time as it is observed that the application meets the requirements for the grant of the patent of utility model, the applicant may divide the application into more than one application, known as “divisional applications”, but no divisional application may go beyond the disclosure as it appears in the original application. Each divisional application shall enjoy the filing date and, where appropriate, the priority date of the original application.

Article 71: Right of priority

The application may contain a declaration in which is claimed, in accordance with Paris Convention or a bilateral, regional, or multilateral convention to which the Republic of

Rwanda is party, priority for one or more previous national, regional or international applications, filed by the applicant or by his legal predecessor in one, or for any, State party to Paris Convention or World Trade Organization or party to the applicable convention.

The filing in Rwanda of that application before the expiration of the periods referred to in paragraph (2) of this article shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention of utility model, and such acts cannot give rise to any third-party right or any right of personal possession of utility model.

The period of priority under paragraph (1) of this article is of twelve (12) months any State party to Paris Convention and/or member of World Trade Organization.

Where the application contains the declaration claiming priority, the empowered authority may request the applicant to supply him, within the prescribed time limit, with a copy of the previous application, certified as true by the Industrial Property authority with which it has been filed, together with the translation of this application where necessary. The empowered authority shall accept the form and the content of the certification mentioned as determined by the certifying authority.

The declaration claiming priority shall indicate the date and number of the previous application as well as the State(s) where it has been filed. The effect of said declaration shall be that provided for by the Paris Convention or any other applicable convention.

If the empowered authority observes that the declaration claiming priority has not been satisfied the requirements provided for in this article and the related administrative Regulations, said declaration shall be considered not to have been filed.

Article 72: Information relating to corresponding foreign applications

The applicant shall indicate to the empowered authority the date and number of any patent of utility model application or other title of protection filed by him or by his legal predecessor abroad “foreign application” and which relates to the same invention of utility model, or essentially to the same invention of utility model, as that which is claimed in the application filed in Rwanda.

In order to facilitate the evaluation of novelty and inventive step as regards the claimed invention, the applicant shall supply the empowered authority with the following documents relating to one of the foreign applications referred to in paragraph (1) of this article:

- 1° a copy of any communication received by the applicant concerning the results of any search or examination carried out in relation to the foreign application;
- 2° a certified or ordinary copy of the patent of utility model or other title of protection granted on the basis of the foreign application;
- 3° a copy of any communication rejecting the foreign application or refusing the grant a patent of utility model.

The applicant shall furnish the empowered authority with a copy of any final decision

invalidating the patent of utility model granted on the basis of the foreign application referred to in paragraph (2) of this article.

Article 73: Conversion of a patent application into a utility model certificate application and vice versa

The applicant may, at any time prior to the grant or refusal of a patent, and in return for the payment of the prescribed fee, convert his application into a utility model certificate application, and this new application shall enjoy the filing date of the original application.

An application may not be converted more than once.

SECTION 4: EXAMINATION; REGISTRATION

Article 74: According the filing date

The empowered authority shall accord, as the filing date, the date of receipt of the application, provided that, at the time of receipt, the application contains:

- 1° an explicit or implicit indication that the grant of a patent of utility model is sought;
- 2° information allowing the identity of the applicant to be established;
- 3° a part which, on the face of it, appears to be a description of an invention of utility model;
- 4° a part of claims identifying one or more new element(s) of the invention of utility model.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph (1) of this article have not been satisfied, he shall invite the applicant within a period of seven (7) days to file the required correction.

Where the applicant complies with the invitation referred to in paragraph (2) of this article, the date of receipt of the required correction shall be considered as the date of application.

Where the application refers to drawings which are not included in the application, the empowered authority shall accord, as the filing date, the date of receipt of the application and shall treat any reference back to the said drawings as non-existent.

Article 75: Examination

After according a filing date, and having the invention classified according to the International Classification, the empowered authority shall examine whether the application complies with the requirements of Articles 23 and 24 of this Law, and the provisions of the Administrative Regulations pertaining thereto, as well as the other requirements of this Law and relevant administrative regulations which, under this Law, constitute formal requirements, and shall examine whether information specifically requested under articles 30 and 31 of this Law.

If the empowered authority finds that the requirements of paragraph (1) of this article have not been satisfied, it shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation, the application shall be considered withdrawn; if the correction relates to the declaration of priority, the right of priority shall be lost.

Where the empowered authority is of the opinion that the application complies with the formal requirements of the paragraph (1) of this article, it shall take a decision as to whether the requirements of articles 56 to 59, 66 and 67 of this Law and, if appropriate, submit the application to be examined as to substance. For the purposes of examination as to substance, the empowered authority shall take into account:

- 1° the results of any international search report and any international preliminary examination report established under the Patent Cooperation Treaty in relation to the application filed in Rwanda;
- 2° the results of any search and examination report and any decision submitted under article 30 of this Law;
- 3° the results of any search and examination report which was carried out upon his request by an external search and examination authority or by a specialized agency of the Government of Rwanda.

Article 76: Grant of the utility model

Where the empowered authority finds that the formal requirements of Article 33 of this Law have been satisfied, it shall grant the patent of utility model; in the opposite case, it shall reject the application and shall notify in writing the applicant of that decision, within the time limit prescribed by the International Conventions to which Rwanda is party.

When granting a patent of utility model, the empowered authority shall:

- 1° publish a reference to the grant of the patent of utility model and its abstract;
- 2° issue to the applicant a certificate of the grant of the patent of utility model and a copy of the patent of utility model;
- 3° record the patent of utility model in the register of patents; and
- 4° make available copies of the patent of utility model to the public, on payment of the prescribed fee.

Article 77: Amendments to the patent text

The empowered authority shall, upon request of the patent owner of utility model, make amendments to the patent text or drawings, intended to limit the scope of the protection conferred hereby, provided that as a result of these amendments the disclosure made in the patent does not go beyond the disclosure made in the original application, on the basis of which the patent of utility model has been granted. Otherwise those amendments shall be without effect.

Article 78: Invalidation of the utility model certificate

Any interested person may request the Competent tribunal to invalidate the utility model certificate.

The competent tribunal shall invalidate the utility model certificate for the following reasons:

- 1° the claimed innovation (or utility model) cannot be the subject of a utility model certificate, taking into consideration articles 56, 57, 58 and 59 of this Law;
- 2° the description and the novelty of the utility model do not satisfy the requirements of this Law;
- 3° the drawings required to understand the innovation (or utility model) have not all been supplied;
- 4° the owner of the utility model certificate is not the innovator (or creator of the utility model) or his rightful claimant.

SECTION 5: RIGHTS CONFERRED BY REGISTRATION; DURATION

Article 79: Rights conferred by registration

The patent of utility model shall confer on the owner the exclusive right to use an invention of utility model in the Republic of Rwanda. The use of the patented invention of utility model by any person other than the patent owner of utility model shall require the owner's consent.

For the purposes of this Law, "use" of a patented invention of utility model shall mean any of the following acts:

- 1° where the patent of utility model has been granted in respect of a product:
 - a) making, importing, offering for sale, selling and using the product;
 - b) stocking such product for the purposes of offering it for sale, selling it or using it;
- 2° where the patent of utility model has been granted in respect of a process:
 - a) using the process;
 - b) carrying out the acts referred to in paragraph 2(1) above as regards a product resulting directly from the use of the process;

Article 80: Civil proceedings against utility model infringement

Subject to provisions of articles 81, 82 and 86 to 88 of this Law, the patent owner of utility model shall be entitled, in addition to other rights, remedies or actions available to him, to undertake court proceedings against any person who infringes the patent of utility model by performing, without his agreement, any of the acts referred to in article 78(2) of this Law, or who performs acts which make it likely that infringement will occur.

Where more than one person owns the same patent of utility model, each of those persons may undertake separate proceedings for infringement of the patent of utility model against any person using the patented invention of utility model without the agreement of all the owners.

Article 81: Limitation to utility model rights: exhaustion of rights

The rights stemming from the patent of utility model shall not be extended to the acts relating to products which have been put lawfully on the market, in Rwanda, by the patent owner or with his consent, consequently exhausting the patent owner's rights.

Without prejudice to the provisions of this article and article 82, the Minister, **after listing the person who has obtained the license** and after consultation with the empowered authority **and after the decision of the Cabinet**, shall have the authority of declaring the patent rights exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention of utility model "the product" from another territory when that product:

1° is not available in the territory of Rwanda;

2° is available in the territory of Rwanda with low quality standards; or

3° in a quantity that is not sufficient to meet the local demand; or

4° at abusive price; or

5° for any other reason of public interest, including anticompetitive practices.

The decision shall be taken in consideration of the following:

- a) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent of utility model or with his consent; and
- b) a patent of utility model claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent of utility model in Rwanda or by a person under his control.

If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted, the Minister shall, ex officio, or at the request of the patent owner of utility model, cancel the authorization.

If the conditions that gave rise to the Minister's decision to consider the patent of utility model exhausted cease to exist, the Minister, **after listing the person who has obtained the license** and after consultation with the empowered authority **and after the decision of the Cabinet**, may, ex officio or at the request of the patent of utility model or trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

Article 82: other limitations to utility model rights

The rights stemming from the utility model shall not be extended to:

1° the use of the patented invention of utility model on board a foreign aircraft and land vehicles, vessels or spacecraft which temporarily or accidentally enter the airspace, territory or waters of the Republic of Rwanda;

2° the acts relating to a patented invention of utility model carried out for scientific and technological research purposes and for public non-profit use;

3° the acts performed by any person who, in good faith and on the filing date or, where priority is claimed, on the priority date of the application on the basis of which the patent is granted, was using the invention of utility model or was making effective and serious preparations to use it, insofar as these acts do not differ, in their nature or purpose, from previous effective or envisaged use.

The right of the prior user of the invention of utility model referred to in paragraph 1(3) of this article may be transferred or devolve only to the enterprise or business, or part thereof, in which the use or preparations with a view to use took place.

It is not an infringement of a patent of utility model for any person where the use, manufacture, construction or sale of the patented invention of utility model is justified only insofar as it is necessary for the preparation and production of the information file which must be provided according to a domestic or foreign law governing the manufacture, construction, use or sale of a product.

Article 83: Duration, renewal

The utility model certificate shall expire, without the possibility of renewal, ten (10) years after the filing date of the corresponding application.

At the end of the fifth year after the filing date, the owner of the utility model certificate shall pay a fee for maintenance in force for the following five (5) years.

If the fee is not settled in accordance with this Law, the utility model certificate shall lapse. A grace period of six (6) months shall be accorded for payment of the fee for maintenance in force, in return for payment of the prescribed surcharge. A Ministerial Decree shall determine all fees stipulated in this article.

SECTION 6: UTILITY MODEL ASSIGNMENT AND LICENSE

Article 84: Utility model assignment

The patent of utility model may be assigned, by contractual arrangement, by the patent owner to any interested person. The utility model assignment contract shall be drawn up in writing and shall be signed by the parties to the contracts.

The transfer of patent ownership of utility model shall be submitted to the empowered authority for:

1° record in the register of patents of utility model;

2° publication of details of the change in patent ownership of utility model.

Recording of transfer of patent ownership of utility model shall be subject to payment of the prescribed fee.

Any change in patent ownership of utility model shall have effect in relation to third parties only after recording into the register of patents of utility model.

Where two or more persons own the same patent of utility model, each of them may assign or transfer separately, by means of succession, his share in the patent of utility model.

The empowered authority may refuse to record a contract for the transfer of ownership of utility model (assignment) when it decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any decision of the empowered authority to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days from the date on which the owner was notified the decision.

Where the appellant is not satisfied by the appeal committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appeal committee's decision.

For the purposes of the provisions of this article, any limitations imposed on the assignee that do not derive from the rights conferred by the registration of the right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

The patent of utility model assignment contract will cease immediately to produce effects after invalidation of the patent of utility model by tribunals.

Article 85: Patent contractual license

The owner of a patent of utility model may, by contractual arrangement, grant a license to use his invention of utility model to another natural or legal person. The license contract shall be drawn up in writing and shall be signed by the parties to the contract.

The license contract shall be submitted to the empowered authority which shall keep the content secret. The empowered authority records in the register of patents of utility model, subject to the payment of the prescribed fee for the publication of the license contract.

Any license contract of utility model shall be valid once recorded in the register of patents of utility model.

A patent license of utility model shall be withdrawn with the lapse of the patent of utility model or on a request by one of the parties to the contract and shall result from:

1° cancellation of the license contract;

2° invalidation of the patent of utility model by the courts.

When a license contract is concluded, the patent owner of utility model shall continue to enjoy the rights granted to him by this Law. The patent owner of utility model may conclude other patent licenses of utility model, unless otherwise stipulated in the contract, in particular where the license contract provides that the license is exclusive.

The authorization granted to the licensee shall extend to the performance, in relation to the patented invention of utility model, of all acts constituting use of the invention, in accordance with article 79 of this Law.

The license contract of utility model may be exclusive, semi exclusive or non exclusive.

The licensee shall not be authorized to conclude license agreements with third parties, in relation to the patented invention of utility model.

Article 86: Control of anti-competitive practices in contractual licenses

In order to guarantee free and honest practices in the exercise of industrial and commercial activities, the empowered authority shall examine, at the time the license contracts are registered, whether certain practices or conditions limit competition or may have prejudicial effects on trade and hamper the transfer and dissemination of technology.

The empowered authority may adopt appropriate measures to prevent or control license of utility model issue practices which may include exclusive reassignment clauses, conditions preventing the dispute of validity and a coercive grouped licenses regime.

The empowered authority shall examine in particular whether the clauses of the contract do not oblige the licensee to pay fees for an invention not used or not patented, or to pay enormous sums in fees, even before the invention is used.

The empowered authority shall examine whether the license contract does not oblige the licensee to import raw materials, intermediate goods or equipment from the licensor, even without the guarantee of quality and profitability of the goods to be produced.

The empowered authority shall verify the clauses of the contract license, the effect of which is to prevent by excessive means the export of the goods made by the licensee, and which authorize the export in return for enormous fees or limit the licensee's competitive opportunities on the domestic and foreign market.

For the purposes of the provisions of this article, the empowered authority may refuse to record a license contract when he decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account

evidence that is pertinent provided by parties to the contract. The decision to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days from the date on which the owner was notified the decision.

Where the appellant is not satisfied by the appeal committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appeal committee's decision.

For the purposes of the provisions of this article, any limitations imposed on the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

SECTION 7: NON-CONTRACTUAL LICENSES

Article 87: Licenses as of right

At any time following the grant of a patent of utility model certificate, the owner may submit a request to the empowered authority for inclusion in the register of a reference to the availability of "licenses as of right".

The inclusion of a license of right shall grant any natural or legal person the right to obtain an operating license for the patent of utility model, subject to conditions which are fixed by the empowered authority upon agreement with the patent owner and the person applying for the license.

A license of right shall not be included if a license contract has been previously registered, unless the licensee consents thereto.

Following the inclusion of the reference to a license of right, the renewal fee shall be reduced by fifty per cent.

At any time following inclusion, the patent owner may submit a request to the empowered authority for removal of the inclusion of a license of right. The empowered authority may withdraw the inclusion of a license of right, if no other license exists or if all the licensees have consented to this request. The withdrawal is effected in return for the payment of a balance of all the renewal fees which would have been due if the inclusion had not been made.

From the date of the withdrawal of the inclusion of a license of right, the rights of the patent owner of utility model shall be the same as if no inclusion had been made.

Article 88: Compulsory licenses

Compulsory licenses for utility model certificates shall be authorized only in cases of failure or insufficiency of use.

CHAPTER III: INDUSTRIAL DESIGNS AND MODELS

SECTION ONE: INDUSTRIAL DESIGN AND MODEL RIGHTS

Article 89: Industrial design or model suitable for registration

An industrial design or model may be registered, provided that it is new.

The protection provided for by this Law shall not be extended to the features of an industrial design or model which are used only to obtain a technical effect and insofar as they leave no freedom as regards arbitrary features of the product's appearance.

Article 90: Novelty of the industrial design or model

An industrial design or model shall be novel, if it has not been disclosed, in any place in the world, in the form of a tangible publication, by use or any other means, prior to the filing date or, where appropriate, the priority date of the registration request.

An industrial design or model shall be novel if it is not anticipated by the prior art.

The prior art shall consist of everything that has been disclosed, anywhere in the world, by publication in tangible form, by oral disclosure, by use of industrial or model or in any other way, prior to the filing date of the industrial design or model in the empowered authority or, where appropriate, the priority date of the application claiming the invention.

For the purposes of the provisions of paragraph (2) of this article, a disclosure of the invention of the industrial design or model shall not be taken into consideration, if it occurred within six (6) months preceding the filing date of the industrial design or model or, where appropriate, the priority date of the application, and if it has resulted directly or indirectly from acts committed by the applicant or his legal predecessor, or from a violation committed by a third party with regard to the applicant or his legal predecessor.

Article 91: Matter excluded from registration

Industrial designs and models contrary to public order or morality may not be registered.

SECTION 2: INDUSTRIAL DESIGN AND MODEL OWNERSHIP

Article 92: Right to registration

The right to a patent of the industrial design or model shall belong to the inventor. The right to the patent is a personal property and may be assigned or transferred by means of succession.

The right to the patent of the industrial design or model may be subject to security or mortgaged.

Article 93: Invention of the industrial design or model made by several persons; first applicant principle

Where two or more persons have jointly made an invention, the right to the patent of the industrial design or model shall belong to them jointly.

Where the invention of the industrial design or model has been carried out jointly by two or more persons, the use of the patented invention of the industrial design or model by one of the owners shall not require the agreement of the other owners. However, the owners of the patent of the industrial design or model may only conclude jointly license agreements relating to the patent of the industrial design or model.

Where and insofar as two or more persons have carried out the same invention of the industrial design or model independently of each other, the right to the patent of the industrial design or model shall belong to the person who has filed the application whose filing date or, where priority is claimed, the validly claimed priority date, is the oldest, as long as said application has not been withdrawn, abandoned or rejected. In order to establish the right of preference the empowered authority shall take into account the matter claimed in the applications.

Article 94: Invention of the industrial design or model carried out as part of an employment contract

If the invention of the industrial design or model has been carried out as part of an employment contract which aims to carry out inventions of the industrial design or model, the right to the patent of the industrial design or model for this invention of the industrial design or model shall belong to the employer, unless otherwise stipulated in the contract.

Where an invention of the industrial design or model has an economic value that is much higher than that which the parties could reasonably foresee at the time the contract is concluded, the inventor shall be entitled to equitable remuneration taking into account the value of his invention of the industrial design or model.

Where an employee who is not obliged by his employment contract to carry out an inventive activity produces, in his employer's field of activities, an invention by using the data, means or know-how available to him through his employment, the right to the patent for this invention of the industrial design or model shall belong to the employee. Nevertheless, in the case the employer makes known his interest in that invention, he may request for the grant of all or part of the right to the patent protecting the invention of the employee in accordance with the agreement between the parties.

Where there is no agreement between the employee and the employer, according to paragraphs (2) and (3) of this article, the remuneration shall be fixed by the Competent tribunal.

Any contractual provision that is less favorable to the employee than these provisions shall be invalid. Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this article shall be without legal effect.

The provisions of this article shall apply to public civil servants as well as to persons whose services are hired in accordance with the Code of Civil, Administrative and Commercial procedures of Rwanda.

Article 95: Naming the inventor

The inventor shall be named as such in the patent of the industrial design or model unless, in a special written declaration addressed to the empowered authority, he indicates that he wish not to be named. Any promise or undertaking to make such a declaration, made with regard to any person by the inventor, shall have no legal effect.

SECTION 3: APPLICATION FOR REGISTRATION OF THE INDUSTRIAL DESIGN OR MODEL

Article 96: Filing the application

The application for registration of an industrial design or model shall be filed with the empowered authority. The application shall comprise:

- 1° a request for registration of an industrial design or model;
- 2° drawings, photographs or other appropriate graphic representations of the subject incorporating the industrial design or model;
- 3° the indication of the kind of products for which the industrial design or model is intended to be used.

The application may be accompanied by a copy of the subject incorporating the industrial design or model.

The application shall be subject to payment of the prescribed fee.

Where the applicant is not the producer, the request shall be accompanied by a declaration justifying the right of the applicant to register the industrial design or model.

Two or more industrial designs or models may be the subject of the same application, provided that they are part of the same class under the international classification or of the same set or composition of items.

At the time the application is filed, it may contain a request for publication of the industrial design or model, once registered, to be suspended for a maximum period of twelve (12) months from the application filing date or, where priority is claimed, from its priority date.

As long as the application is pending, it may be withdrawn by the applicant at any time.

Article 97: Right of priority

The application may contain a declaration claiming priority, as provided for in the Paris Convention or a bilateral, regional, or multilateral convention to which the Republic of Rwanda is party, of one or more earlier national, regional or international applications, filed by the applicant or by his legal predecessor in one, or for any, State party to Paris Convention or World Trade Organization or party to the applicable convention.

The filing in Rwanda of that application before the expiration of the priority period shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, and such acts cannot give rise to any third-party right or any right of personal possession.

The priority period referred to in paragraph one of this article is of six (6) months for any State party to Paris Convention and/or member of World Trade Organization.

Where the application contains the declaration claiming priority, the empowered authority may request the applicant to supply him, within the prescribed time limit, with a copy of the previous application, certified as true by the Industrial Property authority with which it has been filed, together with the translation of this application where necessary. The empowered authority shall accept the form and the content of the certification mentioned as determined by the certifying authority.

The declaration claiming priority shall indicate the date and number of the previous application as well as the State(s) where it has been filed. The effect of said declaration shall be that provided for by the Paris Convention or any other applicable convention.

If the empowered authority observes that the requirements provided for in this article and the related administrative regulations have not been satisfied, said declaration shall be considered not to have been filed.

SECTION 4: EXAMINATION, REGISTRATION

Article 98: According the filing date

The empowered authority shall accord, as the filing date, the date of receipt of the application. The application shall contain the following:

- 1° an express or implicit indication that registration of the industrial design or model has been requested;
- 2° information allowing the identity of applicant to be established;
- 3° a copy of the subject incorporating the industrial design or model, or a required graphic representation embodying the industrial design.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph one of this article have not been satisfied, it shall invite the applicant to file the required corrections within a period of seven (7) days.

Where the applicant complies with the invitation referred to in paragraph (2) of this article, the filing date shall be considered as the date of receipt of the required corrections.

Article 99: Examination of the application

After according a filing date, the empowered authority shall examine whether the application meets the requirements of articles 96 and 97 of this Law and the industrial design or model satisfies the requirements as provided for in paragraph 5 of article 5, paragraph 2 of article 89 and article 91 of this Law.

If the empowered authority finds that the requirements of paragraph one of this article have not been satisfied, it shall invite the applicant to make the required corrections within a period of (90) days. If the applicant does not comply with the invitation, the application shall be considered withdrawn. If the correction relates to the declaration of priority, the right of priority shall be lost.

Article 100: Registration

Where the empowered authority finds that the requirements contained in article 98 of this Law have been met, it shall:

- 1° register the industrial design or model;
- 2° publish a reference thereto; and
- 3° issue to the applicant a registration certificate for the industrial design or model.

Where the empowered authority finds that the requirements have not been met, it notifies the applicant in writing that the registration has not been accepted. Otherwise, it shall reject the application.

An industrial design or model shall be registered without a guarantee of novelty certified by the empowered authority.

Notwithstanding the provisions of paragraph one of this article, where a request has been made to suspend publication under paragraph 6 of article 96 of this Law, after the industrial design or model has been registered, neither the representation of the design or model, nor any file relating to the request, shall be open for public inspection. In this case, the empowered authority shall publish a reference to the suspension of publication of the industrial design or model, information relating to the identity of the registration owner, the filing date of the application, the duration of the period for which suspension has been requested, and any other requisite information. When the period of suspension expires, the empowered authority shall publish the registered industrial design or model.

During the period of suspension of the publication, the institution of legal proceedings based on a registered industrial design or model shall be subject to the requirement that the information contained in the register and the file relating to the application have been forwarded to the person against whom the proceedings have been brought.

Article 101: Invalidation of registration

Any interested person may request the Competent tribunal to invalidate the registration of an industrial design or model.

The competent tribunal shall cancel the registration if the applicant proves that one of the requirements of paragraph 5 of article 5 of this Law, articles 89 to 91 of this Law has not been satisfied, or if the owner of the industrial design or model registration is not the creator or his rightful claimant.

Any industrial design or model registration shall be considered invalid on the registration date.

The final decision of the competent tribunal shall be notified to the empowered authority which shall record it in the register of patents and shall publish a reference thereto as quickly as possible.

SECTION 5: RIGHTS CONFERRED BY REGISTRATION, DURATION

Article 102: Rights conferred by registration

Registration certificate shall confer on the owner the exclusive right to use an industrial design or model in the Republic of Rwanda, and use by any person other than the registration owner shall require the owner's consent.

For the purposes of this Law, "use" of a registered industrial design or model means the manufacture, sale or import, for commercial purposes, of items incorporating the design or model.

Article 103: Civil proceedings against infringement

The owner of the registration of an industrial design or model shall be entitled, in addition to all other available rights, appeals or actions, to undertake legal proceedings against any person who forges an industrial design or model by carrying out, without the owner's consent, any of the acts referred to in paragraph 2 of article 102 of this Law, or who performs acts which make it likely that an infringement will occur.

Article 104: Exhaustion of rights of registration patent

The rights stemming from the patent of an industrial design or model shall not be extended to the acts relating to products which have been put lawfully on the market, in Rwanda, by the patent owner of an industrial design or model or with his consent, consequently exhausting the patent owner's rights of an industrial design or model.

Without prejudice to the provisions of this article and article 105 of this Law, the Minister shall have the authority, on advice of the empowered authority or at the request of any interested party, of declaring the patent rights of an industrial design or model exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention of an industrial design or model (“the product”) from another territory when that product:

- 1° is not available in the territory of Rwanda;
- 2° is available in the territory of Rwanda with unreasonably low quality standards;
- 3° is in a quantity that is not sufficient to meet the local demand; or
- 4° is at prices that the Minister deems abusive; or
- 5° for any other reason of public interest, including anticompetitive practices.

The decision shall be taken considering the following:

- 1° the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent of an industrial design or model or with his consent;
- 2° a patent of registration of an industrial design or model claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent of an industrial design or model in Rwanda or by a person under his control.

If the importer fails to fulfill the purpose that justified the Minister’s decision to consider the patent rights of an industrial design or model exhausted, the Minister shall, ex officio, or at the request of the owner of the patent of registration of an industrial design or model, cancel the authorization.

If the conditions that gave rise to the Minister’s decision to consider the patent of an industrial design or model exhausted cease to exist, the Minister may, ex officio or at the request of the patent of an industrial design or model or trademark owner, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

Article 105: Duration of rights and renewal

Subject to the provisions of paragraphs 2 and 3 of this article, the duration of validity of the registration of an industrial design or model shall be fifteen (15) years from the filing date of the registration application.

Registration may be renewed for two consecutive periods of five (5) years each, at fifth and tenth year, in return for payment of the prescribed fee.

A grace period of six (6) months shall be accorded for the payment of the renewal fee after the deadline, in return for payment of the prescribed surcharge.

If the renewal fee has not been settled in accordance with this Law, the application for registration of the industrial design or model shall be considered to have been withdrawn by the owner or the industrial design or model shall lapse. The lapse of a registered industrial design or model cannot be restored.

SECTION 6: INDUSTRIAL DESIGN OR MODEL ASSIGNMENT AND LICENSE GRANT

Article 106: Industrial design or modal assignment

The patent may be assigned, by contractual arrangement, by the owner of the patent of an industrial design or model to any interested person. The assignment contract of an industrial design or model shall be drawn up in writing and shall be signed by the parties to the contracts.

The transfer of patent ownership of an industrial design or model shall be submitted to the empowered authority for:

- 1° record in the register of patents of an industrial design or model;
- 2° publication of details of the change in patent ownership of an industrial design or model.

Recording of transfer of patent ownership of an industrial design or model shall be subject to payment of the prescribed fee.

Any change in patent ownership of an industrial design or model shall have effect in relation to third parties only after recording into the register of patents of an industrial design or model.

When two or more persons own the same patent of an industrial design or model, each of them may assign or transfer separately, by means of succession, his share in the patent of an industrial design or model.

The empowered authority may refuse to record a contract for the assignment of ownership of an industrial design or model when it decides that the contract concerning the right of an industrial design or model in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. The decision to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days.

Where the appellant is not satisfied with the appeal committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appeal committee's decision.

For the purposes of this article, any limitations imposed on the assignee that do not derive from the rights conferred by the registration of the right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

The assignment contract of the patent of an industrial design or model will cease immediately to produce effects after invalidation of the patent of an industrial design or model by tribunals.

Article 107: Industrial design or model license grant

The owner of an industrial design registration may, by contractual arrangement, grant a license to use his invention to another natural or legal person. The license contract shall be drawn up in writing and shall be signed by the parties to the contract.

The license contract shall be submitted to the empowered authority:

- 1° for recording in the register of industrial design and models subject to the payment of the prescribed fee;
- 2° for publication of a reference to the record of the license.

Any license contract shall have effect toward third parties only after recording into the register of industrial design and models.

The empowered authority may refuse to record a license contract when it decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. The decision to refuse to record the contract may be subject to administrative appeal or appeal to the Competent tribunal respectively within one or two (2) months from the date on which the parties to the contract were notified of the empowered authority's decision to refuse to record the contract.

The license contract of industrial design will cease immediately to produce effects after invalidation by tribunals or for the lapse of industrial design.

Compulsory licenses for industrial designs and models shall be authorized only in cases of failure or insufficiency of use and in order to eliminate abusive and anticompetitive practices.

CHAPTER IV: PROTECTION OF LAYOUT- DESIGNS OF INTEGRATED CIRCUITS

SECTION ONE: PROTECTION REQUIREMENTS

Article 108: Layout-design suitable for protection

The layout-designs of integrated circuits may be protected under this Law if, and insofar as, it is original pursuant to article 109 of this Law.

A registration of the layout-design can be applied for only if it has not yet been used for commercial purposes, or if it has been the subject of such use for a maximum of two (2) years, anywhere in the world.

Article 109: Originality

A layout-design shall be considered to be original if it is the result of the intellectual effort of its creator and if, at the time it is created, it is not known among the creators of layout-designs and the manufacturers of integrated circuits.

A layout-design, which consists of a combination of elements and interconnections that are common, is protected only if the combination, taken as a whole, is original within the meaning of paragraph one of this article.

SECTION 2: OWNERSHIP OF LAYOUT- DESIGNS

Article 110: Right to protection

The right to protection for a layout-design shall belong to the creator of the design. It may be assigned or transmitted by means of succession. Where several persons have created a layout-design jointly, the right shall belong to them jointly.

Where the layout-design has been created under a business or labour contract, the right to protection shall belong, unless otherwise stated in the contract, to the project manager or to the employer.

SECTION 3: APPLICATION FOR REGISTRATION

Article 111: Filing of the application

The application submitted to the empowered authority shall:

- 1° contain a request for registration of the layout-design, and a brief and accurate description of the design;
- 2° indicate the name, address and any other prescribed information relating to the applicant;
- 3° be accompanied by the applicant's possible power of attorney;
- 4° specify the date of first commercial use of the layout design, anywhere in the world, or indicate that this use has not begun;
- 5° provide information establishing the right to protection referred to in article 110 of this Law.

Applications shall be accompanied by a copy or a diagram of the layout-design and, where the integrated circuit has been used commercially, by a sample of the integrated circuit, as well as

information defining the electronic function which the integrated circuit is intended to carry out. However, the applicant may exclude from the copy or the diagram the parts which relate to the manner in which the integrated circuit is manufactured, provided that the parts included are sufficient so as to identify the layout design. For each layout-design, a separate application should be filed.

Any application for protection of a layout-design diagram shall give rise to the payment of the prescribed fee.

SECTION 4: EXAMINATION, REGISTRATION

Article 112: Assignment of filing date

The empowered authority shall assign as the filing date the date of receipt of the application, provided that, on the day of receipt, the application contains the following:

- 1° an explicit or implicit statement that the registration of a layout-design is requested;
- 2° information establishing the applicant's identity;
- 3° a copy or a diagram of the layout-design.

When the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph one of this article have not been satisfied, it shall invite the applicant to file the required correction within a period of seven (7) days.

When the applicant complies with the invitation referred to in paragraph 2 of this article, the date on which the corresponding notification is received shall be regarded as the application filing date.

Where the application refers to drawings which are not included in the application, the empowered authority shall accord, as the filing date, the date of receipt of the application and shall treat any reference back to the said drawings as non-existent.

Article 113: Examination

The empowered authority shall examine whether the application satisfies the requirements contained in article 111 of this Law. If it observes the irregularities, it shall notify them to the applicant and invite him or her to correct them within a period of thirty (30) days.

If the irregularities are not corrected by a prescribed deadline, the application shall be deemed withdrawn.

Article 114: Registration patent

Where the application satisfies the requirements under article 113 of this Law, the empowered authority shall:

- 1° record the layout-design in the register of layout-designs, without examining the originality, the right of the applicant to protection or the accuracy of the facts detailed in the application;
- 2° publish a reference to the registration of a layout-design;
- 3° issue to the applicant a registration certificate for the layout-design.

Article 115: Withdrawal of layout-design from the register

Any interested person may request the removal of a layout-design from the register on the grounds that:

- 1° the layout-design cannot be protected under paragraph 19 of article 5 and articles 108 and 109 of this Law;
- 2° the owner shall not be entitled to benefit from the protection under article 110 of this Law;
- 3° if the layout-design has been used for commercial purposes, anywhere in the world, before the application for registration thereof is filed, this application has not been filed within the period prescribed in paragraph 2 of article 108 of this Law.

If the grounds for withdrawal affect only one part of the layout-design, the withdrawal is made only to the appropriate extent.

The request for withdrawal of the layout- design based on paragraphs one and 2 of this article shall be filed with the competent tribunal in writing and shall be duly explained.

Any registration or part of a registration of a layout-design withdrawn shall be considered null and void from the date on which the protection has taken effect.

The decision of the competent tribunal shall be notified to the empowered authority which shall enter it in the register and publish an opinion relating thereto within a period of thirty (30) days.

SECTION 5: PROTECTION RIGHTS, DURATION

Article 116: Rights granted

Subject to articles 118, 119, 129, 130, 131 and 132 of this Law, the acts below, which are carried out without the holder's authorization, shall be unlawful:

- 1° reproducing, either by incorporation in an integrated circuit or otherwise, the whole of the protected layout-design or any part thereof, except the act of reproducing any part which does not satisfy the requirement of originality referred to in article 109 of this Law;
- 2° importing, selling or otherwise distributing, for commercial purposes, the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit, insofar as it continues to contain a layout-design reproduced unlawfully.

The protection granted under this law shall be independent of the fact that the integrated circuit incorporating the protected layout- design is or is not itself in an article.

Article 117: Civil proceedings against infringement of rights

The performance of any of the acts qualified as unlawful under article 116 of this Law shall constitute an infringement of the rights attached to an integrated circuit layout-design.

Notwithstanding the provisions of this Law, the holder of the registration of an integrated circuit-layout design shall be entitled, in addition to all other rights, remedies or actions, available to him, to launch judicial proceedings against any person who infringes the registered layout-design or who performs acts which make it plausible that an infringement will occur.

Any action covered by paragraph 2 of this article may be undertaken only after an application for registration of the layout-design has been filed with the empowered authority.

Article 118: limitation to layout-design rights, exhaustion of rights

The rights stemming from the patent of layout-design shall not be extended to the acts referred to in point 2 of paragraph 1 of article 116 of this Law relating to products of an integrated circuit of a layout-design which have been put lawfully on the market, in Rwanda, by the patent owner or with his or her consent, consequently exhausting the patent owner's rights.

Without prejudice to the provisions of this article and the article 119 of this Law, the Minister shall have the authority, on advice of the empowered authority or any interested party, of declaring the patent rights of a layout- design exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention of a layout -design called the product from another territory when:

- 1° that product is not available in the territory of Rwanda;
- 2° that product is available in the territory of Rwanda with unreasonably low quality standards;
- 3° that product is in a quantity that is not sufficient to meet the local demand;
- 4° that product is at prices that the Minister deems abusive;
- 5° it is for any other reason of public interest, including anticompetitive practices.

The decision shall be taken considering the following:

- 1° the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent of a layout-design or with his consent; and

- 2° a patent of a layout-design claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent of a layout- design in Rwanda or by a person under his or her control.

If the importer of the product fails to fulfill the purpose that justified the Minister's decision to consider the patent rights of a layout-design exhausted, the Minister shall, ex officio, or at the request of the patent owner of a layout- design, cancel the authorization.

If the conditions that gave rise to the Minister's decision to consider the patent of a layout - design exhausted cease to exist, the Minister may, ex officio or at the request of the patent or trademark owner of a layout-design, cancel the authorization, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

Article 119: Other limitations to layout- design rights

The protection granted to a layout-design under this Law shall not extend to the:

- 1° reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or education;
- 2° incorporation, in an integrated circuit, of a layout design created on the basis of such an analysis or evaluation and itself exhibiting originality under article 109 of this Law, or to the performance, with regard to this layout design, of any of the acts referred to in article 116 of this Law;
- 3° performance of any of the acts referred to in point 2 of paragraph one of article 116 of this Law, as regards an integrated circuit incorporating a layout design reproduced unlawfully, or of any article incorporating such an integrated circuit, where the person performing this act, or having it performed, did not know and had no valid reason to know, when purchasing the integrated circuit or the article incorporating such a circuit, that it incorporated a layout design reproduced unlawfully. Once this person has been duly informed, however, that the layout design has been reproduced unlawfully, he may perform any of the aforementioned acts relating only to the stocks held or which he had ordered prior to being thus informed, and shall pay the owner a sum equivalent to the reasonable fee which could be demanded under a license freely negotiated for such a layout- design;
- 4° performance of any of the acts referred to in point 2 of paragraph one of article 116 of this Law, where the act is performed in relation to an original identical layout -design which has been created independently by a third party.

Article 120: Commencement and duration of protection

The protection granted to a layout-design under this Law shall take effect:

- 1° from the date of first use of the layout -design, anywhere in the world, by the owner or with his consent, provided that an application for protection is filed by the owner with the competent authority of his place of residence, within the period referred to in paragraph 2 of article 108 of this law;
- 2° from the filing date assigned to the application for registration of the layout- design, filed by the owner, if the layout -design has not previously been used for commercial purposes anywhere in the world.

The protection granted to a layout-design under this Law shall cease at the end of the tenth calendar year following the date on which it took effect.

SECTION 6: CHANGE OF OWNERSHIP, LICENSES

Article 121: Transfer of ownership, rectification of the register

Where the essential content of the application has been borrowed from the layout-design of a third party without his or her consent, this third party may, on a written request, ask the empowered authority to transfer the application to him or her.

Where the application has already given rise to a registration, this third party may, within a period of three (3) years from the publication of the registration, on a written request, ask the empowered authority to transfer the registration to him or her and, consequently, to rectify the register.

The empowered authority shall immediately send a copy of the request to the owner. The owner may, within the prescribed period and in the requisite manner, provide the empowered authority with a report detailing his means of defence.

If the owner sends such a report, the empowered authority shall submit a copy of the request to the author and, after hearing the parties, if one or both of them wish to be heard, and conducting a substantive examination, it shall decide whether the application or the registration should be transferred and, where appropriate, the register should be rectified.

Article 122: Change of ownership

Any owner's change of a protected layout- design shall be recorded in writing.

The change in ownership of a layout-design already registered shall be submitted by the interested party to the empowered authority which shall enter it in the register after the payment of the prescribed fee and publish a reference thereto within a period of thirty (30) days starting from the period of the payment of the fee.

The change in ownership of a layout-design shall have effect with regard to third parties only once the registration has been made.

Article 123: Contractual license

The owner of a patent of recording in a register of a layout-design may, by contractual arrangement, grant a license to use his layout- design to another natural or legal person. The license contract shall be drawn up in writing and shall be signed by the parties to the contract.

The license contract shall be submitted to the empowered authority which shall keep the content secret. The empowered authority shall record in the register of layout-designs upon payment of the prescribed fee and publish a reference to the record of the license contract.

Any patent license of the registration of the layout-design shall have no effect towards third parties until recording in the register of the layout designs is effected.

The withdrawal of a patent license recorded in the register of a layout- design shall be made upon invalidation of the patent recorded in the register of a layout-designs or on a request by one of the parties to the contract and shall result from one of the following reasons:

1° cancellation of the license contract;

2° invalidation of the patent recorded in the register of a layout- design by the courts.

When a license contract is concluded, the owner of the patent recorded in the register of a layout-design shall continue to enjoy the rights granted to him by this Law. The owner of the patent recorded in the register of a layout -design may conclude other patent licenses, unless otherwise stipulated in the contract, in particular where the license contract provides that the license is exclusive.

The authorization granted to the licensee shall extend to the performance, in relation to the patented invention, of all acts constituting use of the invention of the layout-design, in accordance with the provisions of article 123 of this law.

Article 124: Control of unfair competition in connection with contractual licenses

In order to guarantee free and honest practices in the exercise of industrial and commercial activities, the empowered authority shall examine, at the time the license contracts are registered, whether certain practices or conditions limit competition or may have prejudicial effects on trade and hamper the transfer and dissemination of technology.

The empowered authority may adopt appropriate measures to prevent or control license issuing practices which may include exclusive reassignment clauses, conditions preventing the dispute of validity of the patent recorded in the register of a layout design and a coercive grouped licenses regime.

The empowered authority shall examine in particular whether the clauses of the contract do not oblige the licensee to pay fees for a layout design not used or not patented, or to pay enormous sums in fees, even before the invention is used.

The empowered authority shall examine whether the license contract does not oblige the licensee to import raw materials, intermediate goods or equipment from the licensor, even without the guarantee of quality and profitability of the goods to be produced.

The empowered authority shall verify the clauses of the contract license, the effect of which is to prevent by excessive means the export of the goods made by the licensee, and which authorize the export in return for enormous fees or limit the licensee's competitive opportunities on the domestic and foreign market.

For the purposes of the provisions of this article, the empowered authority may refuse to record a license contract when it decides that the contract concerning the right of the patent recorded in the register of a layout-design in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any decision to refuse to record the contract may be subject to appeal to the appeal committee provided by this Law within a period of thirty (30) days.

When the appellant is not satisfied with the appeal committee's decision, he may appeal to the competent tribunal within a period of thirty (30) days from the date on which he was notified the appeal committee's decision.

For the purposes of the provisions of this article, any limitations imposed on the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right shall be deemed abusive or, in the event that they have anti-competitive effects, anti-competitive.

Article 125: Reasons for a compulsory license grant

After consultation with the empowered authority, the Minister may grant a compulsory license as a result of the lack of or insufficient industrial or commercial use, in the Republic of Rwanda, of a registered layout-design or in order to remedy an abusive practice.

Article 126: Ex officio compulsory license

Where there was a patent of use or insufficient use of the layout-design in the field of industry or commerce, a person or an association having shown the capacity of use on the territory of Rwanda, can request an ex officio compulsory license from the Minister after a period of four (4) years from the date of the application of the registration patent of the layout-design or after a period of three (3) years from the date where the layout-design was patented, the subsequent time shall be the one to be taken into account. The Minister shall grant this authorisation after consultation with the empowered authority.

The ex officio compulsory license is not granted where there are valid reasons explaining the use or insufficient use of the layout-design.

Article 127: Compulsory licence in case of infringing use of previous layout-design by subsequent layout design

If the layout-design claimed in a "subsequent patent" cannot be used in Rwanda without infringing an invention of layout-design claimed in a "patent of registration," the Minister can, after consultation with the empowered authority, at the request of the owner of the subsequent patent, grant him an operating compulsory license for using the layout-design claimed by the previous patent of registration. In such a case, the following conditions shall be respected:

- 1° if the invention of a layout-design claimed by “a subsequent patent of registration” represents significant technical progress and is of considerable economic interest comparing to the layout-design claimed by a previous patent of registration;
- 2° if a compulsory license is granted according to the provisions of this article, at the request of the owner of the previous patent of the layout design registration, the Minister shall grant, after consultation with the empowered authority, a compulsory reciprocal license for using the layout design claimed by the subsequent patent of registration;
- 3° a compulsory license granted on a patent of the registration of the layout design authorised in relation to the previous patent can be transmitted to a third party only when it is granted together with a patent of the registration of the layout-design in the subsequent patent;
- 4° a compulsory license granted in relation to the subsequent patent of the registration of the layout design can be transmitted to a third party only when it is granted together with a previous patent of the registration.

Article 128: Application for a compulsory license and grant thereof

The request for a compulsory license shall be accompanied by proof that the patent of registration of the layout-design owner has received from the requestor a contractual license request, but that the requestor has been unable to obtain such a license on reasonable commercial conditions and within a reasonable period.

The request for a compulsory license shall be subject to payment of the prescribed fee.

The beneficiary of the compulsory license shall undertake to use the layout-design to a sufficient extent.

The decision to grant the compulsory license shall specify inter alia:

- 1° the field of application and function of the license;
- 2° the period within which the beneficiary of the license shall begin to use the layout design;
- 3° the amount of the appropriate remuneration to be paid to the owner of the patent of registration of the layout design and the payment conditions.

The decision granting the compulsory license may be subject to appeal in the competent tribunal.

Article 129: Reasons for an ex officio compulsory license grant

The Government of Rwanda may decide to grant a license of the use of a layout design to a State department or a third party appointed even without the agreement of the patent of registration of the layout-design owner for the following reasons:

- 1° the public interest, in particular:

- a) national security,
- b) public health,
- c) environment protection;

2° a decision of a judicial organ or of an empowered authority has certified that the manner in which the patent of registration of the layout design owner or his licensee uses the layout design is anti-competitive.

Article 130: Application and “ex officio compulsory license” grant

The request for the Minister’s authorization shall be accompanied by proof that the owner of the patent of registration of the layout design has received, from the author of the request, a contractual license application, by that the author has been unable to obtain the license on reasonable commercial conditions and within a reasonable period.

The provisions of paragraph one of this article shall not apply where an ex officio compulsory license is granted for the following reasons:

- 1° in situations of national emergency or other extremely urgent circumstances;
- 2° in case of use of the layout-design for public non-commercial purposes;
- 3° in case of correction of anti-competitive practices.

Where an ex officio compulsory license was granted according to the provisions of paragraph 2 of this article, the owner of the patent of registration of the layout design is notified the Government’s decision within a period of thirty days (30) from the date on which the decision was taken.

The use of the layout- design shall be limited to the purposes for which it has been granted and shall be subject to payment to said owner or his rightful claimant of appropriate remuneration, taking into account the economic value of the Government’s decision, as determined in that decision and, where the decision has been taken by a judicial organ or by an empowered authority, taking into consideration the need to correct anti-competitive practices.

Subject to the provisions of paragraph 2 of this article , the Government’s decision shall be taken after the patent of registration of the layout design owner and any interested person have been heard by the empowered authority , should they wish to be heard.

For the purposes of article 129 of this Law, the main aim of the use of the layout design by the State department or the third party appointed by the Government shall be supplying the market of the Republic of Rwanda, unless the license granted aimed at correcting anti-competitive practices.

An ex officio compulsory license for the use of the layout-design is only accepted for public non-commercial purposes or for the correction of anti-competitive practices

Article 131: Amendment and withdrawal of an ex officio compulsory license

At the request of the State department or the third party authorized to use the layout-design, the Government may, after that the empowered authority has heard the concerned parties, if one of them or both of the parties wish to be heard, amend, the terms of the decision granting an “ex officio compulsory license”, insofar as a change of circumstances justifies such an amendment.

The Government shall terminate the decision granting an “ex officio compulsory license”, after that the empowered authority has heard the concerned parties, if one of them or both of the parties wish to be heard, that the circumstances which led it to take its decision have ceased to exist and will most probably not recur, or that the State department or third party appointed by it has not respected the terms of the decision.

Notwithstanding the provisions of paragraph one of this article, the Government shall not terminate the decision if it finds that it is necessary.

Article 132: Use of rights in case of the grant of ex officio compulsory license

The ex officio compulsory license shall not exclude the conclusion of license contracts by the patent of registration of the layout design owner or the continuation of the exercise of the use of the layout-design according to his or her rights provided by the provisions of the article 127 of this Law or to exclude the grant of the compulsory license.

Where a person has been granted an ex officio compulsory license by the Government, this license can be transferred to a third party only when it is together with the company or business of this person, or to the part of the company or business within which the layout-design is used.

The decision taken by the Government regarding the grant of the “ex officio compulsory license” may be subject to appeal in the competent tribunal.

TITLE II: PROTECTION OF DISTINCTIVE SIGNS

CHAPTER ONE: MARKS; COLLECTIVE MARKS; CERTIFICATION MARKS; TRADE NAMES

SECTION ONE: REQUIREMENTS FOR THE REGISTRATION OF A MARK

Article 133: A sign suitable for registration as a mark

The following may represent a sign suitable for registration as a mark:

- 1° all forms of denominations including words, proper names, letters, figures and acronyms;
- 2° figurative elements such as designs, relief, product forms or the relevant packaging;
- 3° colours or combinations of colours;
- 4° any combination of aforementioned signs.

Article 134: Registration requirements

A mark can be validly registered only if:

- 1° it is distinctive;
- 2° it is not confusing;
- 3° it is not misleading or deceptive; and if
- 4° it is not descriptive.

Article 135: A distinctive mark

A mark is distinctive if it allows, by nature, the products or services of one company for which it is used to be distinguished from those of other companies.

Article 136: A confusing mark

A mark is confusing if:

- 1° it is identical with, or confusingly similar, to a trademark or trade name which is well known in the Republic of Rwanda for identical or similar products of another company, or constitutes a translation of this trademark or trade name, or if it is well known and is registered in the Republic of Rwanda for products or services which are not identical or similar to those for which registration of the trademark is requested provided that, in this case, the use of this trademark in relation to those products or services indicates a link between those products or services and the owner of the registered well known trademark, and provided that this use is likely to damage the interests of the registered trademark owner;
- 2° it is identical with or similar to a trademark belonging to another owner and which is already registered, or the filing or priority date of which is earlier, for the same products or services, or for very similar products or services, or if it so nearly resembles such a trademark as to be likely to deceive or cause confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Article 137: A deceptive or misleading mark

A mark is deceptive or misleading if it is likely to mislead the public or those in commercial circles, particular as regards the geographical origin, nature or characteristics of the products or services under consideration.

Article 138: A descriptive mark

A mark is descriptive if it contains, among its components, essential characteristics of the product or service under consideration.

For the purposes of the provisions of article 135 of this Law, words or expressions of common use by consumers and technical words or expressions that pertain to the field to which the goods and services belong shall be deemed as not having distinctive capability.

Article 139: A mark not validly registered

A mark can not be validly registered if the application has been made in bad faith or where the sign, if registered, would serve unfair competition purposes.

Notwithstanding the provisions of article 135 of this Law, the Minister, or where appropriate, the competent tribunal shall have the authority to decide whether a mark has acquired secondary meaning or distinctiveness through continued use. In that event the mark shall be registrable.

For the purposes of the article 136 of this Law, the Minister may determine requirements to be fulfilled by a well known trademark in the Republic of Rwanda or for registration of marks that are identical or nearly resemble each other in respect of the same goods or services by more than one owner.

Article 140: Matter excluded from registration as mark

It is prohibited to any person to adopt, in relation with products or services, a trade or service mark which:

- 1° is contrary to public order or to morality;
- 2° reproduces, imitates or contains among its features a coat of arms or armorial bearing, flags or other emblems, a name or abbreviation or initials of the name of, official sign or hallmark and guarantee of a State or intergovernmental organization set up by an international convention, unless authorization is given by the empowered authority of this State or organization.

SECTION 2: ACQUISITION OF THE EXCLUSIVE RIGHT TO A MARK

Article 141: Right to the mark

The exclusive right to a mark conferred by this Law shall be acquired by means of registration, in accordance with the provisions thereof.

SECTION 3: APPLICATION FOR REGISTRATION

Article 142: Filing the application

The application for registration of a mark shall be filed with the empowered authority. It shall contain the following:

- 1° a request for registration of the mark;
- 2° a reproduction of the mark;

3° a list of products or services for which registration of the mark is requested, listed in the order of the relevant class or classes of the International Classification.

Filing of the application shall be subject to payment of the prescribed fee.

The applicant may withdraw the application at any time while it is pending.

Article 143: Right of priority

The application may contain a declaration in which the right of priority is claimed by the mark owner, in accordance with Paris Convention or a bilateral, regional, or multilateral convention to which the Republic of Rwanda is party, priority for one or more previous national, regional or international applications, filed by the applicant or by his legal predecessor in one, or for any, State party to Paris Convention and/or World Trade Organization or party to the applicable convention.

The filing in Rwanda of that application before the expiration of the period of the right of priority shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the mark, and such acts cannot give rise to any third-party right or any right of personal possession of the mark.

The period of priority under paragraph (1) of this article is of six (6) months any State party to Paris Convention and/or member of World Trade Organization.

Where the application contains the declaration claiming priority, the empowered authority may request the applicant to supply him, within the prescribed time limit, with a copy of the previous application, certified as true by the Industrial Property Authority with which it has been filed, together with the translation of this application where necessary. The empowered authority shall accept the form and the content of the certification mentioned as determined by the certifying authority.

The declaration claiming priority shall indicate the date and number of the previous application as well as the State(s) where it has been filed. The effect of said declaration shall be that provided for by the Paris Convention or any other applicable convention.

If the empowered authority observes that the application of the right of priority has not satisfied the requirements provided for in this article and the related administrative regulations, said declaration shall be considered not to have been filed.

SECTION 4: EXAMINATION, OPPOSITION, REGISTRATION

Article 144: According the filing date

The empowered authority shall accord, as the filing date, the date of receipt of the application, insofar as the application contains the following, on the date of receipt:

1° an express or implicit indication that registration of the mark is requested;

- 2° information allowing the applicant's identity to be established;
 - 3° a reproduction of the mark;
 - 4° the list of products or services for which registration of the mark is requested.
- 1.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph one of this article have not been satisfied, it shall invite the applicant to file the required corrections within a period of seven (7) days.

Where the applicant complies with the invitation referred to in paragraph 2 of this article, the empowered authority shall accord, as the filing date, the date of receipt of the required correction.

Article 145: Examination

The empowered authority shall examine whether the application satisfies the requirements of articles 142 and 143 of this Law, and of the related administrative regulations to apply the above articles.

The empowered authority shall examine whether the mark is the mark in the sense of paragraph 15 of article 5 and may be registered according to the provisions of articles 133 and 140 of this Law.

If the empowered authority finds that the requirements of this article have not been satisfied, it shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation, the application shall be considered withdrawn; if the correction relates to the declaration of priority, the right of priority shall be lost.

Where the empowered authority finds that the requirements of paragraphs one and 2 of this article have been satisfied, it shall have the application, as accepted, published immediately in the prescribed manner.

Article 146: Opposition

Any interested person may, within the prescribed time limit and in the prescribed forms by a ministerial decree, give the empowered authority an opinion on his opposition to the registration of the mark for the reason that one or more of the requirements of paragraph 15 of article 5 and articles 133 to 143 of this Law have not been satisfied.

The empowered authority shall immediately send a copy of this opinion to the applicant who shall, within the prescribed time limit and in the prescribed forms, send the empowered authority a response explaining the grounds on which he bases his application. In the absence of such a response, he shall be considered to have abandoned his or her application.

Where the applicant sends a response, the empowered authority shall transmit a copy of that response to the opposing party and, after hearing the parties, if one or both of them wish to be

heard, and examining the substantive issues, shall decide whether it is appropriate to register the mark.

Following publication of the application and until the mark is registered, the applicant shall enjoy the same privileges and rights as if the mark were registered; however, in a case brought under this article for an act performed after publication of the application, the fact for the defendant of establishing that the mark could not be validly registered on the date on which the act was carried out constitutes an admissible exception.

Article 147: Registration

Where the empowered authority finds that the application of the mark registration has satisfied the requirements of article 145 of this Law; and that there has been no opposition to the registration of the mark within the prescribed time limit; or that there has been opposition to the registration of the mark and the matter has been decided in favour of the applicant, it shall:

- 1° register the mark;
- 2° publish a reference to the registration;
- 3° issue to the applicant a registration certificate.

In the opposite case, the registration is not accepted.

Article 148: Invalidation of the registration

Any interested person may request the competent tribunal to invalidate the registration of a mark.

The competent tribunal shall cancel the registration, if the applicant proves that one or more of the requirements of paragraph 15 of article 5 and articles 133 to 140 of this Law has not been satisfied.

The invalidation of the registration of a mark shall be considered to take effect on the date of registration and shall be notified to the empowered authority as quickly as possible for publication and record in the register of marks.

Article 149: Removal on grounds of non-use

Any interested person may request the empowered authority to remove a mark from the register, for a good or service for which it is registered, on the grounds that, following its registration and up to one month prior to submission of the request, the mark has not been used by the registration owner or by a licensee for an uninterrupted period of three years (3) or more. The mark shall not, however, be removed if it is proved that particular circumstances have opposed its use and that there was no intention not to use it or to abandon it for the goods or services in question.

SECTION 5: RIGHTS CONFERRED BY REGISTRATION, DURATION

Article 150: Rights conferred

A registered mark shall confer on the owner the exclusive right of use and use of the registered mark, for all products or services for which it is registered, by any person other than the registration owner shall require the owner's consent.

Article 151: Civil proceedings against rights infringement

The owner of the registration of a mark shall be entitled, in addition to all other available rights, appeals or actions, to undertake judicial proceedings against any person who forges the mark by using it, without the owner's consent, in the above manner or who performs acts which make it likely that infringement will occur. The right shall extend to the use of a sign similar to the registered mark and to use in relation to products and services similar to those for which the mark is registered, when this may lead to confusion in the minds of the public.

Article 152: Limitations and exhaustion of rights

The rights conferred by the registration of a mark shall not be extended to the acts relating to products or services put lawfully on market, in Rwanda, by the registration owner or with his consent.

Without prejudice to the provisions of this article and article 153 of this Law, the Minister shall have the authority, on advise of the empowered authority or at the request of any interested party, of declaring the patent rights of the mark exhausted, and thus of authorizing others to import the patented product provided with a mark or a product manufactured directly or indirectly by means of the patented registration ("the product") from another territory when:

- 1° that product is not available in the territory of Rwanda;
- 2° that product is available in the territory of Rwanda with unreasonably low quality standards; or
- 3° that product is in a quantity that is not sufficient to meet the local demand; or
- 4° that product is at a price that the Minister deems abusive;
- 5° for any other reason of public interest, including anticompetitive practices.

In the decision taking the following must be taken into consideration:

- 1° the product has been put in the channels of commerce in the territory from which it will be imported by the patented mark owner or with his consent;
- 2° a patent of the mark claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent of the mark in Rwanda or by a person under his control.

If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patented mark rights exhausted, the Minister shall, ex officio, or at the request of the patent owner, cancel the authorization.

The provisions of paragraph one of this article shall not apply to the use of the registered mark by a third person with informative purposes, such as to promote sales or engage in comparative advertisement, provided such use is not made in a manner that deceives the public or constitutes act of unfair competition.

The Minister in charge of public health may take measures to limit the use of marks with the purpose of facilitating the prescription of and the access to generic pharmaceutical products and medical devices, or with the purpose of discouraging the public consumption of goods that are deemed prejudicial to health, provided such measures do not unreasonably cause a detriment to the capability of the marks in question to distinguish goods of one undertaking from those of other undertaking.

Article 153: Duration and renewal of rights

The duration of validity of the registration of a mark shall be ten (10) years from the filing date of the application for registration.

On request, the registration of a mark may be indefinitely renewed for consecutive periods of ten years each, subject to payment by the owner of the prescribed renewal fee. A grace period of ten (10) months shall be granted for the payment of the renewal fee after the deadline, in return for payment of the prescribed surcharge.

Where an annual fee is not settled in accordance with the provisions of this article, the application of the mark registration shall be considered to have been withdrawn or shall lapse.

SECTION 6: ASSIGNMENT AND LICENSE OF A MARK

Article 154: Assignment of a mark

Any change in ownership of a registered mark or relating to an application for registration of a mark shall be recorded in writing. The change shall be addressed to the empowered authority for:

- 1° record in the register of marks; and
- 2° publish a reference of change in ownership.

The change in ownership of a registered mark shall be subject to payment of the prescribed fee.

A change in ownership of registration of a mark shall be invalid, however, if it is likely to deceive or to create confusion, in particular as regards the nature, origin, manufacturing process, characteristics or suitability for the use for which they are intended, of the goods or services in relation to which the mark is designed to be used or is used.

The change in ownership for a registered mark shall have effect in relation to third parties only after recording into the register of marks.

The empowered authority may refuse to record an assignment contract when he decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any decision to refuse to record the contract may be subject to administrative appeal or appeal to the competent tribunal to the respectively within one or two (2) months from the date on which the parties to the contract were notified of the empowered authority's decision to refuse to record the contract .

The assignment contract of registered mark will cease immediately to produce effects after invalidation by tribunals or for the lapse of mark.

Article 155: License of mark

Any license contract relating to a registered mark or for which registration is requested shall provide that the licensor exercises effective control over the quality of the goods or services of the licensee, for which the mark is used. If the license contract does not provide for such quality control or the quality control is not actually exercised within the prescribed period and in the requisite manner, the license contract shall not be valid and may not be implemented.

An extract of each license contract shall be submitted to the empowered authority who shall keep its content secret for:

- 1° recording it into the register of marks shall be subject to payment of the prescribed fee;
- 2° publish a reference to the record.

Any license contract for a registered mark shall have effect in relation to third parties only after recording into the register of marks.

The empowered authority may refuse to record a license contract when it decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects.

The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any decision to refuse to record the contract may be subject to appeal to the empowered authority or to the competent tribunal respectively within one or two (2) months from the date on which the parties to the contract were notified of the empowered authority's decision to refuse to record the contract .

The license contract of registered mark will cease immediately to produce effects after invalidation by tribunals.

SECTION 7: COLLECTIVE MARKS

Article 156: Common provisions relating to marks

The provisions of articles 133 to 153 of this Law related to the mark shall apply to collective marks.

Article 157: Specific provisions for collective marks

Subject to the provisions of the articles 133 to 153, the application for registration of a collective mark shall indicate that the mark in question is collective and shall be accompanied by a copy of the regulations determining the conditions of use of this collective mark.

The owner of the registration of a collective mark shall notify the empowered authority of any amendment made to the requirements of paragraph (1) of this article.

Article 158: Invalidation of registration

Apart from the cases provided for in article 149 of this Law, the empowered authority shall invalidate the registration of a collective mark, if the person who requests the invalidation proves that only the owner of the registration of the mark uses the mark, or that he uses it or allows it to be used in contravention of the regulations referred to in article 157 (1) of this Law, or that he uses it or allows it to be used in a manner which is likely to deceive those in commercial circles or the public as to the origin or any other feature common to the goods or services under consideration.

Article 159: Assignment of collective marks

Any change in ownership of a registered mark or relating to an application for registration of a mark shall be recorded in writing. The change shall be addressed to the empowered authority in order to:

- 1° record in the register of marks; and
- 2° publish a reference of change in ownership.

The change in ownership of a registered mark shall be subject to payment of the prescribed fee.

A change in ownership of registration of a mark shall be invalid, however, if it is likely to deceive or to create confusion, in particular as regards the nature, origin, manufacturing process, characteristics or suitability for the use for which they are intended, of the goods or services in relation to which the mark is designed to be used or is used.

The change in ownership for a registered mark shall have effect in relation to third parties only after recording into the register of marks.

The empowered authority may refuse to record an assignment contract when it decides that the contract concerning the right in question contains one or more clauses that are abusive or

anti-competitive or in any manner restrain trade or are likely to have any of those effects. The empowered authority shall hear the allegations of the parties to the contract, if one or both so request, and shall take into account evidence that is pertinent provided by parties to the contract. Any decision to refuse to record the contract may be subject to administrative appeal or appeal to the competent tribunal respectively within one or two (2) months from the date on which the parties to the contract were notified of the empowered authority's decision to refuse to record the contract .

The assignment contract of registered mark will cease immediately to produce effects after invalidation by tribunals.

Any change in ownership of a collective mark or in a collective mark application shall require the approval of the empowered authority.

Article 160: License of a collective mark

Collective mark which is registered, or for which registration is requested, may not be subject to a license contract.

SECTION 8: CERTIFICATION MARKS

Article 161: Common provisions for marks

The provisions of articles 133 to 153 of this Law related to the mark shall apply to certification marks.

Article 162: Specific provisions for certification marks

Subject to the provisions of articles 133 to 153 of this Law, the application for the registration of a certification mark must designate the sign as a certification mark and shall be accompanied by the rules governing its use. These provisions apply to all certification marks, including those that are owned by governmental agencies.

The owner of a certification mark may not use the sign to identify or certify his own goods or services.

Any person who has proved to comply with the technical standards and other conditions of the rules mentioned in paragraph one of this article shall request and obtain the right to use the certification mark in the same conditions established by those rules.

Article 163: Invalidation of registration

In addition to the grounds provided for in article 149, the empowered authority shall invalidate the registration of a certification mark if the person requesting the invalidation proves that the owner of the certification mark uses it, or that he permits its use in contravention of the rules referred to in paragraph one of article 161 of this Law or that he or she 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.

SECTION 9: TRADE NAMES

Article 164: Use of the trade name

A name or designation may not be used as a trade name if, by its nature or through the use which may be made of it, it is contrary to public order or morality and, in particular, is likely to deceive those in commercial circles or the public as to the nature of the company designated by the name.

Notwithstanding any legislative or regulatory provision providing for the obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

Any subsequent use of the trade name by a third party shall, in particular, be considered unlawful, be it in the form of a trade name, mark or collective mark, in the same way as any use of a similar trade name or a similar mark likely to mislead the public.

Any change in ownership of a trade name shall be accompanied by the transfer of the company, or part thereof, identified by the name, and shall be recorded in writing.

CHAPTER II: PROTECTION OF GEOGRAPHICAL INDICATIONS

SECTION ONE: PROTECTION REQUIREMENTS

Article 165: Protection requirement and presumption

The protection granted by this Law shall be applicable, irrespective of whether a geographical indication has been registered; as part of any proceedings instituted under this Law, however, a registration shall establish the presumption that the registered indication is a geographical indication, pursuant to the provisions of this Law.

This protection may be opposed to any geographical indication which, although it is accurate in literal terms as regards the territory, region or area from which the goods originate, misleads the public in that it makes them think that the goods originate from a different territory.

Article 166: Homonyms of geographical indications for wines

In the case of homonyms of geographical indications for wines, protection shall be granted for each indication, subject to the provisions of paragraph 2 of article 165 of this Law. Where the parallel use of these indications is authorized, the empowered authority shall fix the practical procedures according to which the homonymous indications in question are distinguished from each other, taking into account the need to provide equitable treatment for the producers referred to and to ensure that consumers are not misled.

Article 167: Geographical indications excluded from protection

The following geographical indications shall be excluded from protection:

- 1° The geographical indications which are not consistent with the definition of Article 5(6) of this Law;
- 2° The geographical indications which are contrary to public order and morality;
- 3° The geographical indications which are not protected in their country of origin or cease to be so;
- 4° The geographical indications which have lapsed.

SECTION 2: OWNERSHIP OF GEOGRAPHICAL INDICATION

Article 168: Right to the geographical indication

Entitlement to file an application for registration of geographical indications shall be given to the natural or legal persons who, for the goods indicated in the application, carry out producer activities in the geographical region indicated in the application or to any other interested person.

SECTION 3: APPLICATION FOR THE REGISTRATION OF A GEOGRAPHICAL INDICATION

Article 169: Filing the application

The application shall be filed with the empowered authority. The application shall indicate the following:

- 1° the name, address and nationality of the natural or legal person making the filing, as well as the capacity in which this person is applying for registration;
- 2° the geographical indication for which registration is requested;
- 3° the geographical region for which the registration of the indication shall apply;
- 4° the goods to which the indication shall apply;
- 5° the quality, reputation or other feature of the goods for which the indication is used.

The application shall be subject to payment of the prescribed fee.

SECTION 4: EXAMINATION, OPPOSITION, REGISTRATION

Article 170: Examination

The empowered authority shall verify whether the application satisfies the requirements of articles 166 to 168 of this Law.

Where the empowered authority finds that the requirements referred to in paragraph one (1) of this article have been satisfied, it shall have the application, as accepted, published in the prescribed manner.

Article 171: Opposition

Any interested person or competent authority may, in the manner and within the time limits prescribed by a ministerial decree, make a statement, to the empowered authority, of opposition to the registration of the geographical indication for the reason that one or more of the requirements of articles 166 to 172 of this Law have not been satisfied.

The empowered authority shall send a copy of the statement of opposition to the applicant who, in the manner and within the time limit prescribed, shall address a reply to it explaining the reasons on which his application is based, failing which he shall be considered to have abandoned his application.

Where the applicant sends a reply, the empowered authority shall submit a response to the opposing party and, after hearing the parties, if one or both of them wish to be heard, and examining the substantive issues, shall decide whether the geographical indication shall be registered or not.

Article 172: Registration

Where the empowered authority observes that the requirements of article 170 of this Law have been satisfied, and that the registration of the geographical indication has not been the subject of opposition in the manner and within the time limits prescribed by a ministerial decree, or the registration of the indication has been the subject of opposition which has given rise to a decision in favour of the applicant, it shall register the geographical indication; publish a reference to the registration and issue the applicant with a registration certificate. In the opposite case, it shall reject the application.

Article 173: Invalidation of the registration

Any interested person or the empowered authority may request the competent tribunal to order:

- 1° the invalidation of the registration of a geographical indication on the grounds that, in view of article 169 of this Law, the indication may not benefit from protection;

- 2° the amendment of the registration of a geographical indication for the reason that the geographical region mentioned in the registration does not correspond to the geographical indication, the reference to the goods for which the geographical indication is used, or the reference to the quality, reputation or other feature of these goods is missing or is unjustified.

In any proceedings instituted under this article, an opinion providing information on the removal or amendment shall be forwarded to the person who has filed the application for registration of the geographical indication or his rightful claimant; and shall be communicated to all persons entitled to use the geographical indication in accordance with article 167 of this Law.

The persons mentioned in paragraph 2 of this article and any interested person may, in accordance with the provisions of this Law, may give arguments opposing the invalidation of the registration.

Article 174: Relationship between marks and geographical indications

The empowered authority shall refuse or invalidate, ex officio or on a request by an interested party, the registration of a mark which contains a geographical indication, or consists of such an indication, relating to goods which do not originate from the territory indicated, if the use of this indication in the mark for such products in Rwanda is such as to mislead the public as to the true place of origin.

The registration of a mark which contains a geographical indication used to identify wines or which is constituted by such an indication, or the registration of a mark which contains a geographical indication used to identify spirits and which is constituted by such an indication shall be refused or invalidated by the empowered authority ex officio or at the request of an interested party, if the mark in question is registered for wines or spirits which do not have this origin.

Where the registration of a mark has been requested in good faith, or the rights over the mark have been acquired by use in good faith prior to the date of entry into force of this Law, or before the geographical indication is not protected in its country of origin, this Law shall not prevent the possibility of registering the mark or impede the validity of the registration of the mark, or the right to use the mark, for the reason that this mark is identical or similar to a geographical indication.

Any request for compensation made under paragraph 6 of articles 5, 165 and 166 of this Law regarding the use or registration of a mark shall be filed within five (5) years of the prejudicial use of the protected indication becoming generally known in Rwanda, provided that the mark has been published on this date, where the date is prior to that on which the prejudicial use has become generally known in Rwanda, and provided that the geographical indication has not been used or registered in bad faith.

SECTION 5: RIGHTS CONFERED

Article 175: Right of a geographical indication use

Only producers performing their activities in the geographical region indicated in the register shall be entitled to use, for commercial purposes and for the goods indicated in the register, the registered geographical indication, insofar as the goods in question have the quality, reputation or other feature indicated in the register.

Article 176: Civil proceedings against infringement of the right

Any interested person, or interested group of producers or consumers, may undertake proceedings in the competent tribunal in order to prevent, in relation to geographical indications:

- 1° the use, in the designation or presentation of a good, of any means which indicates or suggests that the good in question originates from a geographical region other than the true place of origin in a manner which misleads the public as to the good's geographical origin;
- 2° any use which constitutes an act of unfair competition under this Law.

In any proceedings instituted under this article, the competent tribunal may, in addition to the judgment it makes, grant damages and provide for any other form of civil reparation which it considers appropriate, or impose a criminal sanction.

TITLE III: PROTECTION AGAINST UNFAIR COMPETITION

CHAPTER ONE: GENERAL PRINCIPLES

Article 177: Basic meaning on unfair competition

This Law determines any act or practice that is, in the course of industrial or commercial activities, unlawful or contrary to honest practices and shall constitute, consequently, an act of unfair competition.

In addition to the acts of unfair competition defined by this Law, any act or practice that is, in the course of industrial or commercial activities, contrary to honest practices when their purpose or their consequence is to obtain trade advantages parallel to those of a producer of services or to some products similar to those of another person, shall constitute an act of unfair competition

For the purpose of this Law, an act or practice that is, in the course of industrial or commercial activities, unlawful shall mean act or practice of breach of legal duties when their purpose or their consequence is to obtain trade advantages parallel to those of a producer of services or to some products similar to those of another person.

Article 178: Protection against unfair competition

In addition to the protection of the intellectual property provided by this Law, any commercial, industrial or handicraft-related activity shall be protected against acts of unfair competition.

Article 179: Civil action against acts of unfair competition

Any person harmed, or likely to be harmed, by an act of unfair competition, may refer the matter to the competent tribunal, where through an act contrary to honest industrial and commercial use, a manufacturer, trader, producer or craftsman damages his credibility, takes away his customers or harms his capacity for competition. The competent tribunal shall order the cessation of this act and, where necessary, shall fix the level of damages.

CHAPTER II: ACTS OF UNFAIR COMPETITION

Article 180: Causing confusion with respect to another's enterprise or its activities

Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion by any means with respect to a competitor's or another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

Confusion may, in particular, be caused with respect to:

- 1° a trademark, whether registered or not;
- 2° a trade name;
- 3° a business identifier other than a trademark or trade name;
- 4° the appearance of a product;
- 5° the presentation of products or services;
- 6° a celebrity or a well-known fictional character.

Article 181: Discrediting another's enterprise or its activities

Any false or fallacious allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, a competitor's or another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to :

- 1° the manufacturing process of a product;
- 2° the suitability of a product or service for a particular purpose;
- 3° the quality or quantity or other characteristics of products or services;
- 4° the conditions on which products or services are offered or provided;
- 5° the price of products or services or the manner in which it is calculated.

Article 182: Misleading the public

Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

A misleading act may arise out of advertising or promotion and may, in particular, occur with respect to:

- 1° the manufacturing process of a product;
- 2° the suitability of a product or service for a particular purpose;
- 3° the quality or quantity or other characteristics of products or services;
- 4° the nature of the product, designs, marks and the patent of a competitor or an enterprise whose activities are similar to those of another enterprise;
- 5° the geographical origin of products or services;
- 6° the conditions on which products or services are offered or provided;
- 7° the price of products or services or the manner in which it is calculated.

Article 183: Damaging another's goodwill or reputation

Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of a competitor's or another's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to:

- 1° a trademark, whether registered or not;
- 2° a trade name;
- 3° a business identifier other than a trademark or a trade name;

- 4° the appearance of a product;
- 5° the presentation of products or services;
- 6° a celebrity or a well-known fictional character.

For the purposes of provisions of this article “dilution of goodwill or reputation” means the lessening of the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character.

Article 184: Unauthorised use of technical know-how

Any unauthorized use of technical know-how like as designs, models, marks, patents, technical formulae and combinations or manufacturing method of a competitor or other company shall constitute an act of unfair competition.

Article 185: Act of unfair competition in respect of secret information

Any act or practice, in the course of industrial or commercial activities, that result in the disclosure, acquisition or use by others of secret information without the consent of the person lawfully in control of the rightful holder and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

Disclosure, acquisition or use of secret information by others without the consent of the rightful holder may, in particular, result from:

- 1° industrial and commercial espionage;
- 2° breach of contract;
- 3° breach of confidence;
- 4° inducement to commit any of the acts referred to in points 1 to 3 of this paragraph;
- 5° acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an act referred to in items in this paragraph one to 4 was involved in the acquisition or was not informed.

For the purposes of this article, information shall be considered secret information if:

- 1° it is not known or readily accessible due to the kind of information in question or the way in which it is kept;
- 2° it has commercial value because it is secret;
- 3° it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

TITLE V: MISCELLANEOUS PROVISIONS ON INDUSTRIAL PROPERTY

CHAPTER ONE: PROVISIONS RELATING TO APPLICATION AND REGISTRATION OF INDUSTRIAL PROPERTY TITLES

Article 186: Industrial property titles

For the purposes of this Law “industrial property title” means:

- 1° the patent of invention;
- 2° the utility model certificate;
- 3° the registration certificate for an industrial design or model;
- 4° the registration certificate for a mark or certification sign;
- 5° the registration certificate for a geographical indication;
- 6° the registration certificate for a layout-design of integrated circuit.

Article 187: Application for an industrial property title

The industrial property titles shall be granted in order to confer the rights defined by this Law. Until proof is provided to the contrary, it shall be presumed that the first applicant is also the true rightful claimant.

For each filing, a filing report, a copy of which shall be sent to the applicant, shall be drawn up by the empowered authority with a record of each filing, and stating the day and time when the documents were submitted.

Any application or request relating to the titles defined by this Law shall be made in the two official languages, French or English, with an official translation in the other language. Applications may also be submitted in Kinyarwanda.

Article 188: Agent

The applicant whose habitual residence or principal place of business is located outside the Republic of Rwanda, or any other person so wishing, shall be represented by an industrial property agent authorized to carry out its profession in the Republic of Rwanda.

In order to carry out, in relation to the empowered authority, any procedure provided for by this Law, industrial property agents shall receive prior authorization, owing to their respectability, morality and competence in intellectual property.

Where an application or a request is filed by an agent’s intermediary, the agent shall be duly accredited in a separate communication known as a “power of attorney” bearing the applicant or owner’s signature.

Where a communication is submitted to the empowered authority by a person acting as an agent and the requisite power of attorney is missing, the empowered authority will request that the power be submitted to it within the prescribed time limit and, at the end of this period, the communication by the said person shall have no effect.

The presentation and contents of the power of attorney shall be fixed by an Order of the Minister in charge of industry.

Article 189: Industrial property registry

The empowered authority shall keep registers **in** which all the records provided for by this Law shall be made. These shall be the:

- 1° register of patents;
- 2° register of utility model certificates;
- 3° register of industrial designs and models;
- 4° register of marks;
- 5° register of geographical indications;
- 6° register of layout designs (topographies) of integrated circuits.

The empowered authority shall also keep a directory of companies and trade names in order to facilitate examination and registration of marks, geographical indications and other distinctive signs.

Any interested person may consult one or other of the registers referred to in paragraph one of this article and obtains extracts there from in return for payment of the prescribed fee.

Article 190: Publication

The empowered authority shall make the publications provided for by this Law in the Official Gazette and/or in any other official bulletin.

Article 191: Correction of errors, extension of deadlines

The empowered authority may, subject to the provisions of the related implementing administrative regulations, rectify any error in translation, transcription or script appearing in an application, a filed document or an entry under this Law or the related implementing administrative regulations.

Where the empowered authority considers that the circumstances so justify, he may, on written request, extend, subject to the conditions it fixes and after the parties have been notified, the deadline accorded for performing an act or undertaking a procedure under this Law. An extension may be granted, even if the deadline has expired.

The deadline fixed by the paragraph 2 of article 107 of this Law in relation with filing the application of protection of layout design of integrated circuit may not be extended.

CHAPTER II: DISCRETIONARY POWERS; APPEAL; POWERS OF THE COURTS

Article 192: Discretionary powers

The empowered authority shall give any party to proceedings instituted before it the opportunity to be heard, prior to exercising against this party any discretionary power with which it is entrusted by this Law.

Article 193: Administrative appeal

Any physical or moral person to a procedure hired before the empowered authority may introduce appeal in revision of the empowered authority's decision before the Commission of appeal. The request in revision shall be introduced within thirty (30) working days from the date of receipt of the communication of the empowered authority's decision.

The composition and functioning modalities of the Commission of appeal are determined by an order of the Minister in charge of industry.

Article 194: Duties of the competent tribunal; court appeals

The competent tribunal shall have jurisdiction over disputes relating to the application of this Law.

Any interested party may appeal to the competent tribunal regarding any decision taken by the empowered authority under this Law, and concerning the grant or rejection of an application for an industrial property protection title. The appeal shall be lodged within three (3) months of the date of the decision.

The ruling made by the competent tribunal may be the subject of appeal, in accordance with Rwandan legislation concerning the courts' powers.

PART III: PROTECTION OF COPYRIGHTS AND RELATED RIGHTS

TITLE ONE: PROTECTION OF COPYRIGHTS

CHAPTER ONE: WORKS PROTECTED

Article 195: Protection of original works

Literary and artistic works that are original intellectual creations in the literary and artistic domain are subject to protection granted by this Law, including in particular the following works:

- 1° works expressed by writing (books, pamphlets and other writings) including computer programs;
- 2° Conferences, speeches, lectures, addresses, sermons and other oral works;
- 3° musical works with or without accompanying words;
- 4° dramatic, dramatico-musical works;
- 5° choreographic works and pantomimes;
- 6° audiovisual works;
- 7° works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- 8° works of architecture;
- 9° photographic works; including works made by means similar to photographic process;
- 10° works of applied art like as handicraft works or works produced by industrial process. Thus, protection of industrial designs is granted by the provisions of this Law relating to industrial designs;
- 11° illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- 12° works deriving from Rwanda national folklore.

Article 196: Protection of derivative works and collections of works.

The following shall also be protected as works and collections of works:

- 1° translations, adaptations, arrangements and other transformations or modifications of works and the works of expression of folklore;
- 2° collections of works, works of expression of folklore or of simple facts or mere data like encyclopedia, anthologies, collections of data, whether in machine readable or other form, provided that such collections are original intellectual creations by reason of the selection or arrangement of their contents;

The protection of any derivative work shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.

Article 197: Protection requirements of a work

The protection provided by this Law to any work that is original intellectual creation shall not be submitted to any kind of legal formalities. However, opportunity is available to authors of works for which this Law shall apply to register their works at the empowered authority.

Protection of works shall take place at the beginnings of their creation, even if they are not incorporated to a medium. A works shall be deemed to be created, irrespective of its disclosure and shall be protected by the sole fact of their creation, even if it is not fully accomplished and during the time it is designed by its author.

Protection shall be provided to works, irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Article 198: Works not protected

The protection provided under this Law shall not extend to:

- 1° any official texts of a legislative, administrative or judiciary nature, as well as any official translation thereof;
- 2° published daily news or news communicated to the public;
- 3° any idea, procedure, system, methods of operation, concepts, principles, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work.

CHAPTER II: RIGHTS PROTECTED

SECTION ONE: MORAL RIGHTS; ECONOMIC RIGHTS

Article 199: Moral rights

Independently of his economic rights, and even where he is no longer the owner of the said rights, the author of a work shall have the right:

- 1° to claim the authorship, in particular to have his or her name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- 2° to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his or her honor or reputation;
- 3° to not have or her name indicated on the copies or the right to use a pseudonym.

Article 200: Economic rights

Subject to limitations mentioned by the provisions of this Law, the author of the work shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

- 1° reproduction of the work;
- 2° translation of the work;
- 3° adaptation, arrangement or other transformation of the work;

- 4° rental of the original or a copy of an audiovisual work, a work embodied in a phonogram or a computer program;
- 5° communication to the public of the work by communication to the public of the work by distribution of the original or a copy of the work to the public by sale or other transfer of ownership;
- 6° public performance of the work;
- 7° communication to the public of the work by broadcasting;
- 8° communication to the public of the work by wire or any other means.

The right of distribution under point five (5) of paragraph one does not apply to the original or a copy of the work that has already been subject to a sale or other transfer of ownership in the national territory of Rwanda authorized by the owner of copyright.

The right of rental under point 4 of paragraph one of this article does not apply to rental of computer programs where the program itself is not the essential object of the rental.

Article 201: Economic rights of work derivative from folklore

Expressions of folklore are part of the national culture and heritage.

The use, for profit making purposes, of work derivative from Rwandan national folklore shall be made in return for payment of royalties in the conditions determined by the empowered authority.

Any transfer of ownership in whole or in part, for profit making purposes, of work derivative from Rwandan national folklore or any exclusive license concluded on such work, for profit making purposes, shall be made in return for payment of royalties in the conditions determined by the empowered authority.

A part of funds equal to twenty five per cent (25%) collected in accordance with this article is reserved to activities of creative works promotion.

Article 202: Paying public domain

The works of the public domain are part of the national culture and heritage.

The use, for profit making purposes, of work of the public domain shall be made in return for payment of royalties in the conditions determined by the empowered authority.

Any transfer of ownership in whole or in part, for profit making purposes, of work of the public domain or any exclusive license concluded on such work, for profit making purposes, shall be made in return for payment of royalties in the conditions determined by the empowered authority.

A part of funds equal to twenty five per cent (25%) collected in accordance with this article is reserved to activities of creative works promotion.

SECTION 2: LIMITATIONS TO ECONOMIC RIGHTS

Article 203: Private reproduction for personal purposes

Notwithstanding the provisions of article 200 of this Law, and subject to the provisions of paragraph 2 of this article, the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright and without payment of any remuneration, where the reproduction is made by a natural person exclusively for his own personal purposes.

The provisions under paragraph one of this article shall not extend to reproduction:

- 1° of a work of architecture in the form of building or other similar constructions;
- 2° in the form of reprography of the whole or of a substantial part of a book or of a musical work in the form of notation;
- 3° of the whole or of a substantial part of a database in digital form;
- 4° of a computer program, except as provided in article 178;
- 5° of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

Article 204: Temporary reproduction

Notwithstanding the provisions of article 200 of this Law, the temporary reproduction of a work shall be permitted if all the following conditions are met:

- 1° the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;
- 2° it is caused by a person or entity that, by way of authorization by the owner of copyright or of operation recognized by this Law, is entitled to make that transmission or making perceptible of the work; and
- 3° it is an accessory to that transmission or making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in this article.

Article 205: Free reproduction in the form of quotation

Notwithstanding the provisions of article 200 of this Law, the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright and without payment of any remuneration, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if his or her name appears in the work from which the quotation is taken.

Article 206: Free reproduction for teaching

Notwithstanding the provisions of article 200 of this Law, the following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

- 1° to use a lawfully published work for teaching purposes by way of illustration, broadcasting or sound or visual recordings;
- 2° the reprographic reproduction, for teaching or for examinations in educational institutions of which do not serve direct or indirect commercial gain, to the extent justified by the purpose, various articles lawfully published in magazines or gazettes, short extracts of works got lawfully or a short creative work lawfully published

Article 207: Free reprographic reproduction by libraries and archives

Notwithstanding the provisions of article 200 of this Law, any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author or other owner of copyright, make a few copies of the work by reprographic reproduction:

- 1° where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a natural person, provided that the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research, the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions, and there is no collective license available;
- 2° where the copy is made in order to preserve and, if necessary, replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, to have a lost, destroyed or rendered unusable work replaced.

Article 208: Free reproduction for judicial and administrative purposes

Notwithstanding the provisions of article 200 of this Law, there shall be permitted without authorization of the author and without payment of remuneration, to use a work for judicial or administrative procedure purposes where this use does not exceed the extent justified by the purpose.

Article 209: Free use of works for informatory purposes

Notwithstanding the provisions of article 200 of this Law, the following acts shall be permitted in respect of a work without the authorization of the author or without any payment of remuneration, subject to the obligation to indicate the source and the name of the author as far as practicable:

- 1° the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character where the right to reproduction, broadcasting or communication to the public is not expressly reserved;
- 2° the reproduction or the communication to the public, for the purpose of reporting short current events using photography, cinematography or broadcasting, or other communication using cable of a work seen or heard in the course of such events, to the extent justified by the informatory purpose;
- 3° the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information the authors remaining with the right to publish the collection of those works.

Article 210: Free use of pictures of works permanently located on public places

Notwithstanding the provisions of article 200 of this Law, there shall be permitted without authorization of the author and without payment of remuneration, to reproduce, to broadcast or to communicate by cable to the public a picture of work of architecture, of work of fine arts, a photographic work and a work of applied art that is permanently located on place opened to the public, except if the picture of this work is the main topic of such a reproduction, broadcasting or communication and if it is used for commercial purposes.

Article 211: Free reproduction and adaptation of computer programs

Notwithstanding the provisions of article 200 of this Law, the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author and without payment of a separate remuneration, provided that the copy or adaptation is necessary:

- 1° for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
- 2° for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, or rendered unusable.

No copy or adaptation of a computer program shall be used for any purpose other than those specified in paragraph one of this article, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful within a period of six (6) months after the expiry of the contract.

Article 212: Free ephemeral recording by broadcasting organizations

Notwithstanding the provisions of article 200 of this Law, any broadcasting organization may make, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work which it is authorized to broadcast without the authorization of the author or other owner of copyright and without separate remuneration. All copies of it shall be destroyed within six (6) months of the making or within any longer term agreed to by the author of the recorded work; however where such agreement doesn't exist, a copy of the work may be preserved to the extent of keeping archives or of constituting documentation.

Article 213: Free public performance

Notwithstanding the provisions of article 200 of this Law, there shall be permitted without authorization of the author and without payment of remuneration, to perform publicly a work:

- 1° during the official or religious ceremonies, where the public performance is made on a non-profit basis
- 2° if it is teaching activities of a teaching establishment, only the staff and students or the parents of students or other people so linked directly to activities of the establishment are entitled to attend to a such performance.

Article 214: Free importation of a work for personal purposes

Notwithstanding the provisions of article 200 of this Law, the importation of a copy of a work by a natural person for his or her own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

Article 215: Free reproduction of the work for visually impaired persons

Notwithstanding the provisions of article 200 of this Law, it shall be permitted without the authorization of the author or other owner of copyright:

- 1° to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and;
- 2° to distribute the copies exclusively to those persons, provided that the work is not reasonably available in a form enabling its perception by the visually impaired persons; and the reproduction and distribution are made on a non-profit basis.

The distribution in Rwanda is also permitted in case the copies have been made abroad and the conditions mentioned in paragraph one have been fulfilled.

SECTION 3: DURATION OF COPYRIGHTS PROTECTION

Article 216: Duration of moral rights protection

The moral rights have no limitation in time. They are imprescriptibly inalienable apart from transmissible to the author's heirs after his death or conferred to third person by testamentary disposition.

Article 217: Duration of economic rights protection

Subject to contrary provisions of this Law, the economic rights shall be protected during the life of the author and for fifty years (50) after his or her death.

For the purposes of the provisions of this Law, every period provided concerning the duration of protection of copyrights shall run to the end of the calendar year in which it would otherwise expire.

Article 218: Duration of protection of a work of joint authorship

In the case of a work of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his or her death.

Article 219: Duration of protection of an anonymous work or under a pseudonym

In the case of a work published anonymously or under a pseudonym, the economic rights shall be protected:

- 1° for a period of fifty (50) years from the date on which the work was first lawfully published;
- 2° for a period fifty (50) years from the date on which the work was made;
- 3° for a period of fifty (50) years from the latest date of the year in which the work was lawfully made available to the public.

However, if the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of article 216 or 217 shall apply.

Article 220: Duration of protection of collective work, audiovisual work or work published after death of the author

In the case of a collective work, audiovisual work or work published after death of the author, the economic rights shall be protected:

- 1° for a period of fifty (50) years from the end of the year in which the work was first lawfully published;
- 2° for a period fifty (50) years from the date on which the work was made;
- 3° for a period of fifty (50) years from the end of the year in which the work was lawfully made available to the public.

Article 221: Duration of protection of a work of applied art

In the case of a work of applied art, the economic rights shall be protected for a period twenty five (25) years from the end of the year in which the work was made.

SECTION 4: OWNERSHIP OF COPYRIGHTS

Article 222: Original ownership of copyrights

The original owner of moral and economic rights is the author who has created the work.

Article 223: Presumption of authorship

The natural person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author.

This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

In the case of an anonymous or pseudonymous work, subject where the pseudonym leaves no doubt as to the identity of the author, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. The provisions of this paragraph shall cease to apply when the author reveals his or her identity and ownership.

Article 224: Ownership of a work of joint authorship

The co-authors shall be the original owners of the moral and economic rights.

Where a work of joint authorship can not be used separately, the co-authors shall be the owners jointly but each of those persons may willingly assign his or her part and shall undertake separate proceedings for infringement.

If, a work of joint authorship consists of parts that can be used separately and can be reproduced, performed or executed in a different manner, the author of each part can be entitled the rights on the part that shows personal contribution on that work, until otherwise stipulated in contract, but in this case the author of a part shall remain one of the co-authors of the whole work.

Article 225: Ownership of a collective work

The original owner of the moral and economic rights for a collective work shall be the physical person or moral entity who has initiated its creation and under whose responsibility the work has been created.

Article 226: Ownership of a work created in relation with employment contract

In respect of a work created by an author employed by a physical person or legal entity in the course of his or her employment, the original owner of the moral and economic rights shall be, unless provided otherwise in a contract, the employed author. However, the economic rights shall be deemed assigned to the employer or his or her representative to the extent

necessary for the customary activities of the employer.

A work created under Rwandan Government initiative for official purposes shall belong to the Rwandan State, unless provided otherwise in a contract.

Article 227: Ownership of audiovisual work

The original owners of the moral and economic rights shall be the co-authors of the audiovisual work, as the director, the author of the scenario or the composer of the music.

The authors of pre-existing works included in, or adapted for, the making of the audiovisual work shall be assimilated to the co-authors of the audiovisual work.

The conclusion of a contract under which the co-authors of an audiovisual work undertake to make contributions to the audiovisual work shall, unless provided otherwise in the said contracts, imply a presumption of the assignment to the producer of the audiovisual work of the economic rights on their contributions. This presumption shall not apply to musical works.

Notwithstanding provisions of paragraph two (2) of this article, the co-authors shall, however, maintain their economic rights in their contributions to the extent that those contributions can be subject of acts covered by their economic rights separately from the common audiovisual work, unless provided otherwise in the said contracts.

SECTION 5: ASSIGNMENT RIGHTS

Article 228: Assignment of moral rights

The moral rights shall not be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law on succession.

Article 229: Assignment of economic rights

The economic rights are personal property and are transmissible by testamentary disposition or by operation of law on succession. During the period of protection the right owner may assign, by contract arrangement, these rights, in whole or in part, to third person or legal entity.

The assignment contract shall be valid only if it is made in writing and signed by parties to the contract.

Article 230: Assignment contract of economic rights

The assignment contract of economic rights on the work to carry out any act of economic rights use shall be limited to certain acts and specific kind of use or include certain restrictions to the plan of purposes, the aim of use, the duration of use, the scope and territorial extend and the means of use.

The failure of reference, in the assignment contract, of the territorial extend for which the economic rights have been assigned to carry out any act of use of economic rights, is considered as limiting the assignment to the country in which the assignment contract is granted.

The failure of reference, in the assignment contract, of scope and means of use for which the economic rights have been assigned to carry out any act of use of economic rights, is considered as limiting the assignment to the scope and the necessary means of use so as required to meet purposes and goals considered at the time assignment contract was concluded.

The assignment contract shall contain the mode of remuneration for the author in accordance with the use made to his work.

The rights that the author does not mention in the contract are expressly reserved to him or her or her.

Article 231: Transfer of originals or of copies of work, assignment and license concerning rights on works

Where the author transmits by gift the original or a copy of his or her work, he is not deemed of having assigned his or her economic rights, except otherwise stipulated on the contract, or having granted license for carrying out any acts concerned by his or her economic rights.

Notwithstanding provisions of the paragraph one of this article, the legitimate holder of an original or a copy of the work shall enjoy the right of presentation of this original or copy to the public, except otherwise stipulated in the contract.

The right referred to in paragraph two(2) of the this article shall not be extended persons who are in possession of original or of copies of a work by means of renting or any other means without having acquired the property of it.

SECTION 6: CONCESSION OF THE RIGHTS LICENSE

Article 232: License of rights inclusive

The author of a work may grant, by contract arrangement, license to any physical person or legal entity to carry out any act of economic rights use. The license may be exclusive or no exclusive. The license contract shall be valid only if it is made in writing and signed by parties to the contract. The license contract shall indicate in explicit manner that the license is exclusive or non exclusive.

Article 233: The license contract on economic rights of a work

The license contract of economic rights to carry out any act of economic rights use shall be limited to certain acts and specific kind of use or include certain restrictions to the plan of purposes, the aim of the exploitation, the duration of use, the scope and territorial extend and the means of use.

The failure of reference, in the license contract, of the territorial extend for which license is granted to carry out any act of use of economic rights, is considered as limiting the license to the country in which the license contract is granted.

The failure of reference, in the license contract, of scope and means of use for which the license have been granted to carry out any act of use of economic rights, is considered as limiting the license to the to the scope and the necessary means of use so as required to meet purposes and goals considered at the time the license was granted.

The license contract shall contain the mode of remuneration for the author in accordance with the use made to his or her work.

Rights that the author does not mention in the contract are expressly reserved to him or her.

SECTION 7: PUBLISHING CONTRACT

Article 234: Conditions of publishing contract

By publishing contract, the author of the work or his/her rightful claimant assigns to the publisher, to conditions determined in the contract, the right to make or authorize making a number of graphic, mechanical or other copies of the work and to make the publication or the diffusion of it.

The publisher shall not, without the author's agreement, make modification to his work. He shall indicate on each of copies the name or the author's pseudonym.

Until otherwise stipulated in the contract, the publisher shall terminate the publishing edition within the prescribed time limit necessary for accomplishing this task.

The publishing contract shall determine the form and means of publication as well as the number of copies of this publication. Until otherwise stipulated in the contract, new publication of the work shall not be done without the author's new consent.

The publishing contract shall indicate the mode of remuneration for the author in accordance with the use and revenue extracted from the use of his work. The publisher shall provide to the author the justifying documents that establish accurate relevant revenue extracted from the use as well as specific report containing the number of copies, of those made and those are stocked or the number of sold copies.

Article 235: Publishing business

The publisher shall not be permitted to transfer to third party, either by gift, sale or by means of having company's shares, the profit extracted from publishing contract independently to his or her business, without previous author's authorization.

In case of transfer of publishing in relation with the work and when this transfer is likely to cause injury to the author's economic or moral interests, the author shall be entitled to equitable compensation and in case of failure of such compensation the contract shall

terminate, according to the importance of the infringement.

Where publishing business is exploited by a legal entity, the acquisition of this business by a physical person, associated or not arising from liquidation of business or sharing business assets shall not be considered as assignment of rights and shall require the author's approval.

Article 236: Duration of publishing contract

In case of determined period of contract, the publisher's rights shall be exhausted immediately at the end of this period. However, the publisher shall proceed, during three (3) years after this period, to the sale of copies remaining in the stock, except if, at the end of said period, the author prefers that those copies remain on this hand in return payment to the publisher of equitable remuneration taking into account economic value of these copies.

Article 237: Termination of the publishing contract

The termination of the contract shall take place when the publisher doesn't comply with the terms of the contract or when the author doesn't fulfill his or her liabilities allowing the publisher to proceed to the publishing of the work.

The publishing edition shall be deemed to be exhausted where two successive purchasing orders for delivery of copies have not been satisfied without valid reasonable grounds within six (6) months. Where publishing edition is exhausted, the author shall terminate the contract.

In case of author's death during the publishing edition, the contract is terminated with regard to the part of the contract not executed, except otherwise stipulated by a new contract between the publisher and the rightful claimant of the author.

SECTION 8: PROVISIONAL LICENSES

Article 238: Requirements of a translation license

So far as works published in printed or analogous forms of reproduction are concerned, the empowered authority may grant license of translation to any person so requesting for one or both works. Licenses granted under this article shall be non-exclusive and non-transferable licenses.

If, after the expiration of a period of three (3) years, commencing on the date of the first publication of the work, a translation of such work has not been published in Rwanda in one of three official languages, namely Kinyarwanda, French and English by the owner of the right of translation, or with his or her authorization, any person may obtain a license to make a translation of the work in one or both said languages and publish the translation in printed or analogous forms of reproduction. A license under the conditions provided for in this article may also be granted if all the editions of the translation published in the language concerned are out of print.

Any license under this Article shall be granted only for the purpose of teaching, university scholarship or research.

Article 239: Criteria of granting a translation license

Any license under this article shall be granted only if:

- 1° the applicant establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or that, after due diligence on his part, he or she was unable to timely find the owner of the right;
- 2° at the same time as making the request the owner of the right cannot be found, the applicant for a license sent, by registered mail, copies of his or her application submitted to the right holder, to the Minister in charge culture, to the empowered authority and to the publisher whose name appears on the work.

No license obtainable after period referred to in paragraph two (2) of article 238 shall be granted until a further period of six (6) months has elapsed. If, during the said period of six (6) months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his or her authorization, no license shall be granted.

If a translation of a work is published by the owner of the right of translation or with his or her authorization at a price reasonably related to that normally charged for comparable works, any license granted under articles 238 and 239 shall expire. In this case, any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

No license shall be granted under the under articles 238 and 238 when the author has withdrawn from circulation all copies of his work.

The name of the author shall be indicated on all copies of the translation published under a license granted under articles 238 and 239, and the original title of the work shall appear in any case on all the said copies.

Due provision shall be made by the empowered authority decision to ensure a correct translation of the work and that the license provides, in favour of the owner of the right, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between concerned persons.

No license granted under the articles 241 and 242 shall extend to the export of copies, and any such license shall be valid only for publication of the work in the country where it was granted.

Article 240: Conditions of granting a reproduction license

So far as works published in printed or analogous forms of reproduction are concerned, the empowered authority may grant license of reproduction to any person so requesting for one or both works. Licenses granted under this article shall be non-exclusive and non-transferable licenses.

A license of reproduction shall be granted after the expiration of one of the following relevant periods commencing on the date of first publication of a particular edition of the work:

- 1° for works of the natural and physical sciences and of technology, the period shall be three (3) years;
- 2° for works of fiction, poetry, drama and music, and for art books, the period shall be seven (7) years;
- 3° for all other works, the period shall be five (5) years.

Where after any period referred to in paragraph two (2) of this article, copies of an edition have not been distributed in Rwanda, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged for comparable works, any person may obtain a license to reproduce and publish such edition at that or a lower price.

A license to reproduce and publish an edition which has been distributed may also be granted if, after the expiration of the period referred to in paragraph two (2) of this article, no authorized copies of that edition have been on sale for a period of six (6) months at a price reasonably related to that normally charged for comparable works.

Any license under this article shall be granted only for the purpose of general public interest, university teaching or in connection with systematic instructional activities.

Article 241: Criteria of granting a reproduction license

A license under the article 240 may be granted only if:

- 1° the applicant establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or that, after due diligence on his or her part, he was unable to find the owner of the right;
- 2° at the same time as making the request the owner of the right cannot be found, the applicant for a license sent, by registered mail, copies of his or her application submitted to the right holder, to the Minister in charge culture, to the empowered authority and to the publisher whose name appears on the work.

No license obtainable after period referred to in paragraph two (2) shall be granted for reproduction under the article 240 until a further period of six (6) months has elapsed. If, during six (6) months after the said period, distribution of copies of work was made by the owner of the right of translation or with his or her authorization, no license under this Article shall be granted.

If copies of an edition of a work are distributed by the owner of the right of reproduction or with his or her authorization, at a price reasonably related to that normally charged for comparable works, any license granted under this article shall terminate. In such case, any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

No license shall be granted under this article if the author has withdrawn from circulation all

copies of the edition for the reproduction of which the license has been applied for.

A license to reproduce and publish a translation of a work shall not be granted under this article where the translation was not published by the owner of the right of translation or with his or her authorization.

TITLE II: PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS

CHAPTER ONE: RIGHTS OF AUTHORIZATION

Article 242: Rights of performers

Without prejudice to the provisions of articles 247 to 249 a performer shall have the exclusive right to carry out or to authorize any of the following acts:

- 1° the broadcasting of his or her performance, except where the broadcasting:
 - a) is made from a fixation of the performance which the performer has authorized to be made, or
 - b) is a re-broadcasting made or authorized by the organization initially broadcasting the performance;
- 2° the communication to the public of his or her performance, except where the communication:
 - a) is made from a fixation of the performance which the performer has authorized to be made,
 - b) is made from a broadcasting of his or her performance;
- 3° the fixation of his or her unfixed performance;
- 4° the direct or indirect reproduction of a fixation of his or her performance;
- 5° the distribution of a fixation of his or her performance, or of copies thereof, to the public by sale or other transfer of ownership;
- 6° the rental to the public of a fixation of his or her performance, or copies thereof;
- 7° the making available to the public of his or her fixed performance in phonogram, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his or her live aural performances and performances fixed in phonograms, have the right to claim to be identified as the performer of his or her

performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his or her performances that would be prejudicial to his or her reputation. The provision of article 216 and of article 228 of this law shall apply mutatis mutandis to moral rights on performances.

Article 243: Limitations concerning rights on performances

Except otherwise stipulated in the contract:

- 1° the authorization to broadcast shall not imply the authorization to other broadcasting organizations to broadcast the performance;
- 2° the authorization to broadcast shall not imply the authorization to fix the performance;
- 3° the authorization to broadcast and to fix the performance shall not imply the authorization to reproduce fixation;
- 4° the authorization to fix the performance and to reproduce fixation shall not imply the authorization to broadcast the performance from the fixation or its reproductions.

The right of distribution under point five (5) of paragraph one of article 242 does not apply to the copy of a fixation of his or her performance that has already been subject to a sale or other transfer of ownership in the territory of the Republic of Rwanda authorized by the performer.

Article 244: Rights of phonogram producers

Subject to the provisions of articles 247 to 249, a producer of a phonogram shall have the exclusive right to carry out or to authorize any of the following acts:

- 1° the direct or indirect reproduction of the phonogram;
- 2° the distribution of the original or copies of the phonogram to the public by sale or other transfer of ownership;
- 3° the rental of a copy of the phonogram to the public;
- 4° the making available to the public of the phonogram, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

The right of distribution under point two of paragraph one of this article does not apply to the original or the copy of the phonogram that has already been subject to a sale or other transfer of ownership in the territory of the Republic of Rwanda authorized by the producer.

The copies of phonograms published and subject to a sale, or their cases, must wear distinctive signs as well the indication of the year of the first publication, affixed in clear and usual manner to show that the protection is reserved.

If copies or their cases do not allow to identify the phonogram producer by means of the name, the mark or other suitable designation, mention should include the name of the owner

of the producer's rights as well. Finally, if the copies of phonograms or their cases do not allow to either identifying main performers, mention should also include the name of the owner's rights of these artists in the country where the fixing took place.

Article 245: Rights of broadcasting organizations

Subject to the provisions of articles 247 to 249, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:

- 1° the rebroadcast of its broadcast;
- 2° the fixation of its broadcast;
- 3° the reproduction of a fixation of its broadcast;
- 4° the communication to the public of its broadcast on television.

CHAPTER II: EQUITABLE REMUNERATION FOR USE OF PHONOGRAMS

Article 246: Equitable remuneration for broadcasting and communication to the public

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall be paid by the user to the producer.

Remuneration for use of the phonogram shall be shared as follows:

- 1° 50% shall be paid to the producer of the phonogram;
- 2° the remaining 50% shall be paid to the performers.

Performers shall share the amount paid by the producer of the phonogram following the agreement between the parties.

The right to an equitable remuneration under this article shall subsist from the date of publication of the phonogram until the end of the fiftieth calendar year following the year of publication, or where the phonogram is not published from the date of fixation of the phonogram until the end of the fiftieth calendar year following the year of fixation.

For the purposes of this article, phonograms that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

CHAPTER III: FREE USE OF RELATED RIGHTS

Article 247: General free use of a work

Notwithstanding the provisions of articles 242 to 246 of this Law, the following acts shall be carried out without authorization of owners of rights stipulated in these articles and without any remuneration:

- 1° using for personal purposes;
- 2° reporting current events, using short parts of a performance, a phonogram or a broadcast;
- 3° reproduction solely for scientific research;
- 4° reproduction solely for the purpose of face-to-face teaching activities, except for performances and phonograms which have been published as teaching or instructional materials;
- 5° the reproduction, in the form of quotation, of a short part of a performance, a phonogram or a broadcast, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of information;
- ° any other case of use where, under provisions of this Law, a work can be used without the authorization of the author or other owner of copyright.

Article 248: Free use of performances

At the time performers have authorized incorporation of their performances on fixation of images or of images and sounds, the provisions of the article 242 cease of being applicable.

Article 249: Free ephemeral use by broadcasting organizations

Authorizations so required in accordance with provisions of articles 242 to 246 of this Law, to make fixations of performances and broadcasts, to reproduce such fixations on phonograms published for commercial purposes shall not be required when ephemeral fixations or reproductions are made by broadcasting organisation using his or her own means and for his or her own broadcasts subject that:

- 1° for each broadcast of fixation of a performance or its reproductions in accordance with the provisions of this article, the broadcasting organization is authorized to broadcast the said performance;
- 2° for each broadcast of fixed broadcasts, or of reproduction of such fixation in accordance with the provisions of this article, the broadcasting organisation is authorized to broadcast this broadcast;
- 3° for all fixation made in accordance with this article or its reproductions, the fixation and its reproductions are destroyed within the same time limit of that are applicable to fixations and reproductions of works protected by copyrights in accordance with

article 212 of this Law, except a single copy that shall be kept to the exclusive purposes of conservation of archives and constitution of documentation.

CHAPTER IV: DURATION OF COPYRIGHTS PROTECTION

Article 250: Duration of protection for performances

The rights granted to performance under this Law shall be protected within a period of fifty (50) years:

- 1° following the end of the year in which the performance was fixed in phonograms; or
- 2° following the end of the year in which the performance took place, if performance has not been fixed on phonograms.

Article 251: Duration of protection for phonograms

The rights granted to phonogram under this Law shall be protected within a period of fifty (50) years following the end of the year of publication of the phonogram or, if the phonogram has not been published, within a period of fifty (50) years from the fixation of the phonogram, within a period of fifty (50) years, from the first month of the year that follows the year of fixation.

Article 252: Duration of protection for broadcasts

The rights granted to broadcasts under this Law shall be protected within a period of twenty five (25) years from the first month of the year that follows the year in which the broadcast took place.

TITLE IV: MISCELLANEOUS PROVISIONS ON COPYRIGHTS AND RELATED RIGHTS

CHAPTER ONE: COLLECTIVE MANAGEMENT OF COPYRIGHTS AND RELATED RIGHTS

Article 253: Company of collective management of copyrights and related rights

The use and management of copyrights, rights of performers, of phonogram producers and of broadcasting organisations shall be entrusted to one or many private companies of collective management of copyrights and related rights.

One or more independent companies of collective management of authors' rights and related rights apply the Law concerning the organisation and the functioning of commercial companies in Rwanda.

Activities of one or more independent companies of collective management of copyrights and related rights shall include management of authors' rights and related rights holders, representation and commercial agent of authors and rights holders, as well as administration and management of license granting scheme, collection, calculation and distribution of royalties and dividends arising from use of the rights granted under this Law.

However, provisions of this article shall not prohibit any author of work or his or her legal successors, or any related right owners for exercising directly their rights as granted by this Law.

For its activities concerning grant of license, collection of royalties and dividends pertaining to public performance and communication to the public by broadcasting, by cable or throughout other means of musical or dramatic-musical works, their use and benefit extracted from it, the fixation of sounds of those works and their use and benefits extracted from it, one or more independent companies of collective management of copyrights and related rights shall have to promptly respond to public for any demand of reasonable information about any documents and registers of such works and benefits extracted from their use, or of such current performances fixations, according to the normal procedure.

However, the empowered authority has to follow-up the functioning of independent companies in charge of the management of copyrights granted on the entire national territory.

Article 254: Management of rights belonging to foreigners

The empowered authority ensures the follow-up of conventions which have been signed between foreign companies and independent n companies of collective management of copyrights and related rights operating in the country.

However, provisions of paragraph one of this article shall not prohibit one or more independent companies of management of copyrights and related rights to sign conventions with other foreign companies of collective management.

PART IV: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND PENALTIES

TITLE I: RIGHTS ENFORCEMENT MEASURES

CHAPTER ONE: PREVENTIVE MEASURES

SECTION ONE: CONSERVATORY AND PROVISIONAL MEASURES

Article 255: Application and ordering conservatory and provisional measures in relation with industrial property

On a request by the owner of the protection title, or of the licensee, where the licensee has invited the owner to undertake proceedings to obtain the imposition of a penalty and the

owner has refused or omitted to do so, the competent tribunal may issue an injunction to prevent imminent infringement or an unlawful, as referred to paragraph one of article 5, paragraph three (3) of article 163, and articles 180 to 185 of this Law, or to preserve relevant evidence in regard to an alleged infringement.

By ordering conservatory and provisional measures, the competent tribunal may, in addition, grant damages or any other compensation provided for by Rwandan civil and commercial legislation.

On a request by a empowered authority or any person, association or interested trade union, in particular of producers, manufacturers, traders or consumers, the competent tribunal may grant the same forms of compensation in the case of an act of unfair competition, as referred to paragraph one of the article 5, paragraph three (3) of article 163, and articles 180 to 185.

Article 265: Application and ordering conservatory and provisional measures in relation with copyrights and related rights

On a request of the owner of copyrights and related rights or the licensee, the competent tribunal may order measures to prohibit the committing of infringement of works, or unlawful act or in violation of any right protected under this Law.

The competent tribunal may, on a request of protected right owner, grant damages and any other compensation to an alleged infringement provided for by Rwandan civil and commercial legislation.

Article 257: Requirements for ordering conservatory and provisional measures

Where appropriate, in particular where any delay is likely to cause irreparable harm to the right owner or where there is a demonstrable risk of evidence being destroyed, the competent tribunal shall order provisional measures without giving the other party an opportunity of being heard provided that the applicant has furnished:

- 1° any reasonably available evidence satisfying the competent tribunal with a sufficient degree of certainty that the applicant is the right holder and that the applicant's rights are being infringed or that such infringement is imminent; and
- 2° any security or equivalent assurance required by the competent tribunal to protect the defendant and to prevent abuse.

Where provisional measures have been ordered without having given the other party an opportunity of being heard, the competent tribunal shall give the two parties affected notice of the decision, at the latest after the execution of the measures.

Where provisional measures have been ordered under paragraphs one and two (2) of this article, the defendant may file a request for review with the competent tribunal within fifteen (15) days from the notification of the decision. In the review proceedings, the competent tribunal shall give the two parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a period of two (2) working days after the notification of the request for review.

Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within twenty (20) working days or thirty (30) calendar days, whichever is the longer, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the competent tribunal in the decision, the competent tribunal shall revoke the provisional measures upon the request of the defendant.

Where the provisional measures are revoked or where the competent tribunal decides on the merits of the case in proceedings under this article initiated by the applicant that there has been no infringement or threat of an infringement, the competent tribunal shall order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

The conservatory and provisional measures stipulated by this Law and aiming at preserving relevant evidence shall also be available before the granting of the pending registration, if the competent tribunal so deems necessary. In that event, the applicant shall initiate court proceedings before the competent tribunal within the period stipulated under paragraph (4) of this article from the publication of the registration of the industrial property.

SECTION 2: CORRECTIVE MEASURES

Article 258: Application and ordering corrective measures for industrial property

On a request by the owner of the protection title, of the licensee or of any interested person, the competent tribunal may order:

- 1° cessation of release of counterfeit trademark goods or goods infringing owner's right into the channels of commerce;
- 2° that the counterfeit trademark goods or goods infringing owner's right goods be disposed of commercial channels, without compensation of any sort, in such a manner as to avoid any harm caused to the right owner; the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce;
- 3° that materials or instruments the predominant use of which has been or may be the creation of infringing goods be disposed of outside the channels of commerce without compensation of any sort in such a manner as to minimize the risks of further infringement of the owner's right.
- 4° the seizure, forfeiture or destruction of the infringing goods and of any materials and instruments having mainly served in the commission of the offence.

Article 259: Request for corrective measures for copyrights and related rights

Upon a request by the owner of the protected right, by the licensee or by any interested person, the competent tribunal may order:

- 1° cessation of infringement and any infringing act to right protected under this Law;

- 2° the detention, impoundment or destruction of copies of works or phonograms made or imported or suspected of being made or imported without the authorization of the owner of any right protected under this Law;
- 3° the detention, impoundment or destruction of the packaging of copies of those works or phonograms, the implements, instruments or materials that could be used for the making of, and the documents, accounts or business papers referring to such copies;
- 4° disposal of copies, phonograms and their packaging outside the channel of commerce in such a manner as to avoid harm, or continuation of being harmed to the right owner;
- 5° disposal of the implements, instruments or materials outside the channel of commerce that are used to commit or continue to commit acts of infringement, to the right owner.

The detention, impoundment or destruction in accordance with paragraph one of this article shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

Article 260: Requirements for ordering corrective measures

Upon order by competent tribunal, the owner of any right protected whose right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice suffered.

The right compensation shall be fixed taking into account the importance of the prejudice suffered by the owner of the right, the importance of the infringer's profits attributable to the infringement as well as the payment of expenses caused by the infringement in undertaking proceedings before administrative authorities and competent tribunals by the owner of the protected right.

Where the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity to protected title provided by this Law, the competent tribunal may limit damages and compensation for the prejudice suffered to the profits of the infringer attributable to the infringement.

CHAPTER II: CRIMINAL PROVISIONS

Article 261: Act of forgery

Subject to the provisions of this Law, any industrial or commercial use, in the Republic of Rwanda, of an invention, utility model, industrial design and model, mark or other distinctive sign of business, trade name, geographical indication or layout design integrated circuit, which is the subject of a protection title granted under this Law and made by any person other than the owner of the title and without his or her consent, shall constitute an act of forgery.

Any infringement of copyrights or related rights protected under this Law, committed willfully or by gross negligence, by any third person for profit-making purposes and without owner's right consent shall constitute an act of forgery.

Any third person, who knowingly sells, offers on sale, is making rent, detains or introduces on the territory of the Republic of Rwanda, the alleged infringing goods for commercial purposes, shall be considered as committing the same offence.

Article 262: Proceedings against an act of forgery

On a request by the owner of the protected right, the competent tribunal shall order the infringer to pay the right owner damages and adequate compensation for the infringement of his or her intellectual property right provided that the infringer acted knowingly or with reasonable grounds to know of the infringement.

For an industrial property title, the request for the competent tribunal to order the payment of damages may be filed only after the protection title of industrial property right in question is granted and shall relate to acts of infringement practiced at the filing date of the application of industrial title or subsequent to this date.

Article 263: Criminal penalties for an act of forgery of industrial property title

Any person who knowingly performs an act constituting an infringement under paragraph one and paragraph three(3) of article 261 of this Law, or an unlawful act as per paragraph one of article 5, paragraph three (3) of article 164 and articles 180 to 185 of this Law, shall commit an offence and shall be liable to a maximum fine of fifty thousand Rwandan Francs (50.000) to five hundred millions Rwandan Francs (500.000.000) or a maximum term of imprisonment of five (5) years, or one or both of penalties.

Any person who steals or uses by fraudulent manner a formula of invention in any industrial activity shall be punished of an active confinement of one to five (5) years and a fine of five to ten times the value of profits attributable to the infringement.

In addition to criminal penalties, the competent tribunal may also order the seizure, confiscation and destruction of the incriminating items and of all materials or instruments used mainly for the crime to be committed.

Article 264: Criminal penalties for an act of forgery of copyrights and related rights

Any person, who knowingly performs an act constituting an infringement under the paragraph two (2) and paragraph three (3) of the article 261 of this Law, shall commit an offence and shall be liable of the following penalties:

- 1° for producer of **phonogram** and publisher: a maximum term of imprisonment of five (5) to ten (10) years or a maximum fine of five millions Rwandan francs (5,000,000) to ten millions Rwandan francs (10,000,000) or one or both of penalties;
- 2° for distributor and bookseller: a maximum term of imprisonment of one year to five (5) years or a maximum fine of five hundred thousand Rwandan francs (500,000) to five hundred thousand Rwandan francs , or one or both of penalties;
- 3° for the retailer: a maximum fine of twenty thousand (20,000) to one hundred thousand (100,000) Rwandan francs.

Any broadcasting organization or communication company by means of radio electrical waves which communicate a protected work, without previous authorization of right's owner or his or her rightful claimants, shall be liable of a maximum fine of five hundred thousand (500,000) Rwandan francs to one million (1,000,000) Rwandan francs.

All fraudulent use, on a literary, artistic or scientific work, of the name of the author or of his distinctive sign so as to identify his own work shall be liable of the same penalties as fraudulent producer of phonograms.

Any third person who knowingly sells, offers on sale, is making rent, detains or introduces on the territory of the Republic of Rwanda the works protected under this Law shall be liable of penalties referred to in paragraph one of this article.

Any person who grants authorizations at the name of performers without being duly accredited or any person who knowingly acts under false authorization shall be liable of a maximum term of imprisonment of six (6) months to one year and a maximum fine of two hundred thousand (200,000) Rwandan francs to one million (1,000,000) Rwandan francs or one or both of penalties.

In addition to criminal penalties, the competent tribunal may also order the seizure, confiscation and destruction of the incriminating items and of all materials or instruments used mainly for the crime to be committed.

CHAPTER III: OTHER PROVISIONS RELATED TO THE ENFORCEMENT OF RIGHTS

Article 265: Information to the rights' owner

The competent tribunal shall order the infringer to inform the rights owner of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution.

Article 266: Indemnification of a wrongfully enjoined defendant

The competent tribunal shall order an applicant whose request measures were taken and who has abused enforcement procedures to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered by virtue of such abuse. Where this is considered adequate in view of the seriousness of the abuse, the competent tribunal shall also order the person having abused enforcement procedures to pay the other party expenses including appropriate counsel's fees.

Article 267: Pertinent evidences

The competent tribunal may, where a party has presented reasonably available evidences sufficient to support the claims and has specified evidences relevant to substantiation of the claims which lies in the control of the opposing party, order that these evidences be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.

In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the competent tribunal may make preliminary and final determinations, affirmative or negative, on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or pertinent evidences.

Article 268: Proof of the process used

For the purposes of civil proceedings in respect of the infringement of rights of the patent owner as referred to in articles 255 to 262 of this Law, if the subject matter of a patent is a process for obtaining a product, the competent tribunal may order the defendant to prove that the process used to obtain an identical product is different from the patented process.

Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process in either of the following circumstances:

- 1° the product is new; or
- 2° there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

In requiring the production of evidences, the competent tribunal before which the proceedings referred to in the articles 260 and 261 of this Law take place shall take into account the legitimate interests of the alleged infringer in not disclosing his or her manufacturing and business secrets.

Article 269: Provisions on protection of technical measures for copyrights and related rights

For the purposes of protecting technical measures for copyrights and related rights, it is not permitted to:

- 1° circumvent effective technical measures of work protection; or
- 2° produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that are promoted, advertised or marketed for the purpose of circumventing effective technical measures of work protection;

Technical protection measures are “effective” where the use of a work or object of related right protected under this Law is controlled by the right owner through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or a copy control mechanism, which, in the normal course of its operation, achieves the protection objective.

Notwithstanding the provisions of paragraph one of this article, upon the request by the beneficiary or the licensee as stipulated in the article 203 of this Law, the competent tribunal may order that the necessary means be made available, to the extent strictly required, to benefit from it.

Article 270: Information related to rights management

Information related to rights management information is any information which identifies the author, the work, the performer, the performance of the performer, the producer of the phonogram, the phonogram, the broadcaster, the broadcast, the owner of any right under this Law, or any information about the terms and conditions of use of the work and other works under this Law, any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, on a copy of a phonogram or a fixed broadcast, or appears in connection with the broadcasting; communication or making available to the public of a work, a fixed performance, a phonogram or a broadcast.

Article 271: Interdictions related to the use of information on copyrights and related rights

For the purpose of protection of information on copyrights and related rights, it is not permitted to:

- 1° remove or alter any electronic information on the use of rights without the consent of the rights owner; or
- 2° distribute, import for distribution, broadcast or communicate to the public of works or other subject-matter protected under this Law from which electronic copyright use of information has been removed or altered without the authorization of the rights owner.

Paragraph one of this article does not prohibit any governmental activities for public order or security authorized by law.

Article 272: Judiciary appeals against a decision aiming at rights on works

Any decision by the competent tribunal in infringement proceedings or against any other injury caused to intellectual rights shall be subject to an appeal in accordance with Rwandan legislation.

TITLE II: BORDER SPECIAL MEASURES

CHAPTER I: SUSPENSION OF RELEASE INTO FREE CIRCULATION OF GOODS

SECTION ONE: BORDER MEASURES TAKEN BY THE CUSTOMS AUTHORITY TO SUSPEND RELEASE INTO FREE CIRCULATION

Article 273: Request for suspension of release into free circulation

Upon the request by the owner of the protected right, of the licensee or of any interested person, who has valid grounds for suspecting that the importation of counterfeit trademark goods is taking place or infringing a protected rights owner or is imminent, or upon its own initiative, the customs authorities shall suspend the customs clearance procedures and release into free circulation of goods if there is sufficient prima facie evidence that the importation of counterfeit trademark goods is taking place or infringing upon a protected rights owner or is imminent.

Article 274: Notification of suspension of release into free circulation

Where the release into free circulation was suspended on its own initiative, the customs authorities shall notify the right owner and give him or her an opportunity to file an application for the suspension of release into free circulation within a period of three (3) days.

Where the release into free circulation was suspended in conformity with the article 272, the importer and the rights owner shall be promptly notified of the suspension of the release of goods within a period of three (3) days.

Article 275: Exchange of information

Where releasing into free circulation is suspended on a request the applicant shall be required to provide customs authorities with adequate evidences a protected right has been infringed or that an infringement is imminent, and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities.

Where the release into free circulation is suspended, the customs authorities may inform the right owner of the names and addresses of the importer, consignor and consignee and of the quantity of the said goods provided that this is in proportion to the seriousness of the supposed infringement.

The customs authorities may require the right owner to provide any information that may assist it in exercising its powers under this Law.

Article 2756: Requirements for suspension of release into free circulation

The customs authorities shall suspend release into free circulation after a security assurance of twenty per cent (20%) of the value under customs clearance procedures of the alleged infringing goods has been provided by the applicant.

The security assurance is intended:

- 1° to cover expenditures incurred by the suspension measures of release into free circulation by the customs authorities and other third persons;
- 2° to indemnify the importer where the goods in question are subsequently found not to be infringing;
- 3° to prevent any abuse.

Where a security assurance is not provided within three (3) working days from the receipt of the notification, goods shall be released into free circulation.

Article 277: Period of suspension of release into free circulation

The period of suspension of release into free circulation is twenty (20) working days or thirty (30) calendar days whichever is the longer. Those days are calculated from the receipt of the notification of the suspension notice.

If, within a period not exceeding ten (10) working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that court proceedings leading to a decision on the merits of the case have been initiated, or that the duly competent tribunal has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions of customs clearance have been complied with.

If, at the end under paragraph 1 of the present article, a court proceedings has been hired before the competent tribunal and that a decision on the merits of the case is not rendered, the importer of goods may have opportunity of release into free circulation in posting of security assurance of ten (10%) of the value of goods under customs clearance for which the purpose is to cover expenses liability undertaken by the right owner and in compensation of any prejudice if there is found to be infringement.

Where circumstances so require, period of suspension referred to in paragraphs 1 and 2 of this article shall be extended by the competent tribunal respectively for a new period not exceeding twenty (20) workdays under the paragraph one or ten (10) workdays under the paragraph 2 of this article.

Article 278: Inspection and examination of goods

Without prejudice to the protection of confidential information principle, the customs authority shall allow the right owner and the importer to examine the goods the clearance of which has been suspended, and to remove samples for examination, testing and analysis, in order to substantiate their respective claims.

Article 279: Liability of customs authority

The customs authority shall not be liable for any action taken in respect of customs clearance of goods and suspension of their release into free circulation, even though it is later proved that the release into free circulation of counterfeit and/or infringing a protected right under this Law without any bad intention.

However, where an application for suspension of release into free circulation has been addressed, the customs authority shall be liable to take action in accordance with the provisions of this law.

SECTION 2: BORDER SPECIAL MEASURES TAKEN BY THE JUDICIARY AUTHORITY

Article 280: Ordering border special measures

Border special measures shall, where the conditions set out in this Law are met, be ordered by the competent tribunal to prevent the importation of goods which infringe intellectual property rights conferred in Rwanda.

Border special measures shall also be ordered by the competent tribunal to prevent the importation of goods the production and /or the commercialization of which in Rwanda is an act of unfair competition, in accordance with this law.

Border measures which may be ordered by the competent tribunals are:

- 1° the suspension of release into free circulation of the infringing goods;
- 2° the extension of the period of suspension of release into free circulation of such goods taken by customs authority;
- 3° the disposal of such goods outside the Rwanda channels of commerce;
- 4° the destruction of such goods.

Article 281: Application for suspension by tribunals

The owner of an intellectual property right, who has valid grounds for suspecting that the importation of goods infringes his or her rights or may take place, may file an application with the competent tribunal requesting it to order the customs authority to suspend customs clearance of those goods.

The application shall be presented in writing and shall state the grounds for the request. It shall be accompanied by:

- 1° true adequate evidences that the applicant is the owner of the intellectual property right;

- 2° true adequate evidences that his or her right has been infringed or that an infringement is imminent;
- 3° a sufficiently detailed description of the goods alleged to be infringing in order to make them readily recognizable by the customs authority and
- 4° the prescribed fee.

The Minister may fix, by decree, the content of the application to be addressed to the competent tribunal.

The decision of the competent tribunal to suspend release into free circulation of alleged to be infringing goods is taken considering provisions set up by this present Law so as to prevent and eliminate infringement and any injury to intellectual property rights.

At receipt of the decision taken by the competent tribunal the customs authorities shall suspend clearance procedures of alleged infringing goods.

Article 282: Requirements for suspension of release into free circulation

Suspension of release into free circulation ordered by competent tribunal is made after a security assurance of twenty (20%) of the value under customs clearance procedures of the alleged infringing goods has been provided by applicant.

That security assurance is intended:

- 1° to cover any liability vis-à-vis third persons affected by suspension measures and to ensure payment of the expenditure incurred in keeping the goods in suspension by the customs authorities;
- 2° to indemnify the importer where the goods in question are subsequently found not to be infringing;
- 3° to prevent any abuse.

Where a security assurance is not provided within three (3) working days from the receipt of the notification, goods shall be released into free circulation.

Article 283: Period of suspension of release into free circulation

The period of suspension of release into free circulation is twenty (20) working days or thirty (30) calendar days from the receipt of the notification of the suspension notice, whichever is the longer.

If, before the end of twenty (20) working days or thirty (30) calendar days, whichever is the longer, from the receipt of the suspension notice, a court proceedings has been hired before the judicial authority and that a decision on the merits of the case is not rendered, the importer of goods may have opportunity of release into free circulation in posting of security assurance of ten (10%) of the value of goods under customs clearance for which the purpose is to cover

expenses liability undertaken by the right owner and in compensation of any prejudice if there is found to be infringement.

If at the end of the period of suspension of release into free circulation of goods a decision in case of merit is not rendered and where circumstances so require, the competent tribunal may extend this period for successive periods of ten (10) working days from the end of the previous suspension.

Article 284: Proceedings leading to decisions on the merits of the case

Where imported goods have been found to be infringing or are causing serious injury to intellectual property right, the competent tribunal shall order the destruction of infringing goods and the disposal of them outside the channels of commerce in such a way as to preclude injury to the right owner, without compensation of any sort.

Where imported goods have been found to be counterfeit, the provisions of articles 262, 263 and 264 of this Law shall apply.

Where there are not found to be infringement to intellectual property right, the competent tribunal order the applicant to pay the importer of the goods appropriate compensation for any injury caused to him or her through the wrongful detention of goods.

CHAPTER III: OTHER PROVISIONS IN RELATION WITH SPECIAL BORDER MEASURES

Article 285: De minimis imports

The provisions of this Law on special border measures shall not apply to small quantities of goods of a non-commercial nature contained in the traveler's personal luggage or sent in small consignments.

Article 286: Goods in transit

The provisions of this Law on special border measures shall not apply to goods that are in transit in the territory of Rwanda.

However, if the customs authority has information showing that the goods in transit in the territory of Rwanda are counterfeit, special border measures shall apply.

Article 287: Appeal against decisions by the customs authority

The aggrieved party may lodge an appeal against any decision or measure taken by the customs authority on or in connection with the suspension of release into free circulation of goods. The appeal shall be lodged before the competent tribunal within five (5) working days from the notification of the decision.

Article 288: Judiciary appeals

The aggrieved party may lodge an appeal against any decisions taken by the competent tribunal on or in connection with the suspension of release into free circulation of goods. The

appeal may be filed within ten (10) working days from the notification of the decision in accordance with Rwandan legislation on courts' powers.

In case of appeal, the competent tribunal may fix a new period of suspension not exceeding twenty (20) working days from the first period of suspension.

PART V: MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

TITLE ONE: MISCELLANEOUS PROVISIONS ON INTELLECTUAL PROPERTY

CHAPTER ONE: INTELLECTUAL PROPERTY RIGHTS IN RELATION WITH PLANTS DISCOVERY, GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Article 289: Protection of plants discovery, genetic resources, traditional knowledge and folklore

The protection of discovery of plants, genetic resources, traditional knowledge and folklore is granted by a related special law.

CHAPTER II: APPLICATION OF INTERNATIONAL TREATIES

Article 290: Application of international treaties

The provisions of any international intellectual property treaty to which the Republic of Rwanda is party shall apply. In case of conflict with the provisions of this Law, the provisions of the international treaty shall prevail over the latter.

TITLE II: TRANSITIONAL AND FINAL PROVISIONS

CHAPTER ONE: TRANSITIONAL PROVISIONS

Article 291: Transitional provisions for protected industrial property titles

At the entry in force of this Law, the patents granted and the industrial designs or models and trade marks registered under the Law of February 25th 1963 on patents, under the Law of February 25th, 1963 on industrial designs and models, under the Law of February 25th, 1963 on marks of factory or trade shall remain valid but, subject to paragraphs (2) and (3) of this article, shall be considered to have been granted or registered under this Law.

The patents thus granted and the industrial designs or models thus registered shall remain valid for the whole of the remaining period up to the end of the duration of the protection accorded under the above Law, subject respectively to payment of the annual maintenance in force or renewal fees provided for in this Law.

The registrations of marks thus made according to the provisions of paragraph one of this article shall be renewed within ten (10) years of the entry into force of this Law.

Article 292: Transitional provisions for protected copyrights and related rights

The provisions of this Law shall also apply to works which have been created, to performances which have taken place or have been fixed, to phonograms which have been fixed and to broadcasts which have taken place before the date of entry into force of this Law, provided that those works, performances, phonograms and broadcasts are not works of public domain because of the end of the period of protection granted under the Law n° 27/1983 of November 15th, 1983 governing copyrights in Rwanda or under Law of their country of origin.

The legal effects of any act and any contract concluded either stipulated according to the Law n° 27/1983 of November 15th, 1983 governing the copyrights in Rwanda or to other law of any country applicable before the entry into force of this Law shall be entirely valid and as not amended.

CHAPTER II: FINAL PROVISIONS

Article 294: Repeal of former provisions contrary to this Law

The Law of February 25th, 1963 on patents, the Law of February 25th, 1963 on industrial designs or models and trade marks, the Law of February 25th, 1963 on factory and trade marks, the Law No 27/1983 of November 15th, 1983 governing the copyrights, the Legislative Order No. 41/63 of February 24th, 1950 on the elimination of unfair competition, and any other former legal provisions contrary to this Law are hereby repealed.

Article 295: Commencement

This Law shall come into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 26/10/2009

The President of the Republic
KAGAME Paul

The Prime Minister
MAKUZA Bernard

Seen and bearing the seal of the Republic:

The Minister of Justice/Attorney General

Tharcisse KARUGARAMA