

Protection of IP

Chile

I. INTRODUCTION

Intellectual property rights are granted by the State of Chile and can be enforced through legal and judicial means. Following the Roman tradition, intellectual property rights in Chile need to be applied for in an official manner and be duly registered, using the procedures established by law.

Chilean law provides, in general terms, for all usual intellectual property rights, including trade marks, patents, utility models, industrial designs, geographical indications and appellations of origin, lay-out designs (topography) of integrated circuits, copyright and neighbouring rights, software, etc. Such rights can be applied for by any person, Chilean or foreign. Applicants must grant a power of attorney in favour of the person or firm appointed to represent them.

Industrial Property is regulated in Chile by the Law of Industrial Property, namely Law No. 19.039 (as amended by Law No. 19.996 of 2005) and its Regulations. It includes the following:

- trade marks;
- patents;
- utility models;
- industrial designs;
- geographical indications and appellations of origin; and
- lay-out designs (topography) of integrated circuits.

In addition, Chile is a signatory to the Paris Convention, the TRIPS Agreement and two bilateral treaties, with the USA and the European Union, both of which include specific chapters on Intellectual Property.

The rights listed above can be the subject of licences, assignments and franchise and distribution agreements. The Industrial Property Law establishes some basic provisions for some of these contracts. In addition, general provisions of Commercial and Civil Law will apply.

2. REGISTERED TRADE MARKS

The Law defines a trade mark as any sign which can be graphically represented, which is capable of distinguishing products, services or industrial or commercial establishments in the market. Phrases or slogans can also be registered.

The use of a trade mark is not mandatory in Chile and it is therefore not possible to revoke a third party's trade mark registration on the grounds of non-use.

Trade mark registration is granted by the State of Chile, provided several requirements are met, and affords the trade mark owner a number of rights in respect of that trade mark. Some limited rights may also be afforded to the users of unregistered trade marks.

Unauthorised use of registered trade marks can be enforced and prosecuted through civil and criminal actions.

Registrations last for a period of 10 years from the registration date. Registration can be renewed indefinitely for subsequent terms of 10 years upon payment of a fee.

3. PATENTS

The Law defines an invention as any “solution to a technical problem which originates from an industrial activity”. An invention can consist of a product or a process or be related to these. The Law defines a patent as “the exclusive right granted by the State for the protection of an invention”.

For an invention to be patentable it must be novel, involve an inventive step and be capable of industrial application.

Use of a patent by its owner is not compulsory in Chile. In order to maintain the registration of a patent, two annuities must be paid: the first being due when the patent is granted and the second before the expiry of 10 years.

The enforcement of a patent is mainly prosecuted through civil and criminal judicial actions.

Once granted, an invention patent is protected for 20 years from the filing date. A utility model registration lasts for 10 years from the filling date.

4. PROTECTION OF IP RIGHTS

4.1 REGISTRARS

4.1.1 Patents

The National Industrial Property Institute (INAPI) is an independent public office subject to the supervision of the Ministry of Economy. It acts both as the registration authority and as an administrative court in the case of conflicts (i.e. oppositions, cancellations, etc). As with trade mark applications, decisions of the INAPI, when acting as a court, can be the subject of appeal.

The patent application must be filed in Spanish, and it must contain the title of the invention and a complete and clear description of the invention.

The applicant will also need to file a power of attorney, an assignment from the inventor to the applicant (if these are not the same person) and a certified copy of the priority claimed with the application.

Once the application has been accepted, it will be published in the Official Gazette and becomes open to third party oppositions. Notice of such oppositions will be served on the applicant who may contest such oppositions in writing.

4.1.2 Trade Marks

As with patents, the INAPI acts as the registration authority and also as an administrative court in case of conflicts (i.e. oppositions, cancellations, etc).

The decisions of the INAPI when acting as a court, can be the subject of an appeal before the Industrial Property Appeals Court (Tribunal de Propiedad Industrial), which is a special administrative Court established to deal only with intellectual property appeals.

Trade mark applications are filed and prosecuted at the Trade Mark Office. The application will then be examined by the Authority.

If it is rejected, it can be the subject of an administrative appeal. Once accepted, the application will be published in the Official Gazette, which allows third parties to file oppositions for a period of 30 working days. If an opposition is filed, the applicant will have 30 working days to contest the opposition in writing.

4.1.3 Copyright

Chile's Copyright Act (Law No. 17.336 and several amendments) protects the authorship of literary, artistic or scientific works, with respect to the use, authorship and integrity of the work.

Article I provides that copyright arises automatically upon the creation of a work by its author.

Protection extends to Chilean and foreign authors domiciled in Chile. Foreign authors not domiciled in the country are entitled to the protection recognized by the international conventions to which Chile is a party, such as the Berne Convention, the TRIPS Agreement and two bilateral treaties with the USA and with the European Union.

Chile has also ratified the Universal Copyright Convention and the Inter-American Convention on authorship in literary, scientific and artistic works.

Copyright protection in Chile also protects software and some original three-dimensional designs which are not capable of trade mark protection.

As copyright works do not need to be registered, the work can be deposited in the Intellectual Rights Register together with payment of a fee.

Protection is granted for the life of the author and extends for up to 70 years after the death of the author.

Author

Porzio Rios & Ass.

Correspondents
Uribe Hübner Canales y Cia Ltda

E-mail oficina@uhc.cl
Tel. +56 2 696 1372

To contact PLG

Julienne Laveaux
PLG Secretariat
PANNONE LAW GROUP E.E.I.G.
avenue de Sumatra 41
1180 Brussels
Belgium

Tel. +32 2 374 88 46
Fax: +32 2 374 90 61
E-mail plg@plg.be
www.plg.eu.com

Disclaimer

The contents of this article are intended to provide guidance only and should not be taken to constitute legal advice on specific problems. PLG cannot accept responsibility for this information or matters affected by subsequent changes in the law.

Readers are requested to direct their enquiries to the author(s) of the article.

© 2010 Pannone Law Group

