

Protection of IP

Argentina

I. TRADE MARKS**I.1 INTRODUCTION**

Article 17 of the Argentine Constitution protects intellectual property stating that: "All authors or inventors are the exclusive owners of their works, inventions or discoveries for the period of time established by law".

Much of the Argentine intellectual property law has been shaped by the influence of international agreements, particularly the Paris Convention and the TRIPS agreement.

Argentine trade mark and trade names law is characterized by legislative stability and a wide basis of judicial decisions. The basic statute governing this area is Law 22,362 (hereinafter, 'the Trade mark Act' or 'TA'), enacted in 1980, together with its regulatory decrees. Law 22,362 replaced Law 3,975, of the year 1900. Although Law 22,362 formally enacted a total replacement of Law 3,975, the change – in practical terms – was far less drastic than that total replacement would suggest. Law 22,362 is based on the text of Law 3,975, with modifications that to a large extent had already been introduced by judicial decisions in Argentine trade mark practice. Thus, e. g. the possibility that unregistered trade mark rights may prevail over rights derived from registered trade marks, presently established by Article 24(b) of the Trade mark Act, had already been recognized by the courts.

I.2 REGISTERED TRADE MARKS

The TA provides that Full protection for trade marks is obtained under Argentine law by means of the registration of the trade mark. Use is not a requisite for protection, although lack of use may result in the lapsing of the trade mark rights after a period of five years.

The duration of a trade mark registration is ten years as from the date of registration, renewable indefinitely for periods of ten years provided the trade mark has been used in connection with the sale of a product, the rendering of a service or as a trade name, during the five year period preceding each expiry date.

A trade mark holder may apply for a preliminary injunction on the basis of both the Argentine Code of Civil Procedure and the TRIPS Agreement. In both cases the trade mark holder must provide, for the injunction to be granted, reasonably strong evidence showing that he is the trade mark holder; and that an infringement or an imminent infringement exists.

2. PATENTS AND PETTY PATENTS**2.1 INTRODUCTION**

Patents and Petty Patents (*modelos de utilidad*) in Argentina are governed by Law No. 24,481, as amended by Law No. 24,572, and Decree No. 260 of 20 March 1996 (the "Patent Law").

Argentine Patent Law has been shaped to a significant extent by the Paris Convention (Law No. 17,011) and by the TRIPS agreement (Law No. 24,425). These international agreements have been ratified by Argentina and therefore incorporated into Argentine law.

The Patent Law provides that patents will be granted for any invention that complies with three basic conditions: that they be new, that they imply an inventive activity, and that they have industrial applicability. Disclosure of an invention by the inventors or their lawful successors, by any means of communication or exhibition in a fair, within the period of one year immediately prior to an application for a patent or of the recognized priority, is not a bar to obtaining a valid patent. Patents are granted for 20 years as from the date of application.

The owner of a patent granted in Argentina has the right to prevent third parties from carrying out without his/her consent acts of manufacture, use, offer for sale, sale, or importation within the territory, of the product which is the subject matter of the patent. The protection for process patents covers the act of using the process, and also the acts of using, offering for sale, selling, or importing the product obtained directly by that process.

Finally, the Patent Law also provides that petty patents will be granted for any invention that complies with two basic conditions: that they be new and that they have industrial applicability. Petty patents are granted for 10 years as from the date of application

2.2 COPYRIGHT

The sources of Argentine copyright law are the common ones in civil law countries: international treaties, legislation, custom, court decisions, legal doctrine. However, the sources of Argentine copyright law have certain noteworthy characteristics. First, legislation has a prominent position. Case law, which in other areas of Argentine legal practice is extremely important, is relatively underdeveloped in the copyright area. Second, treaties have played a very significant role in the development of Argentine copyright law. These treaties are approved by federal laws, and have a legal status superior to that of ordinary laws.

The main statutory source of copyright law is Law 11,723 (the "IP Law"). This law, dating back to 1933, has been amended several times. It includes the basic rules on copyright, as well as provisions on related matters, such as publishing contracts.

The IP Law extends protection to scientific, literary, artistic or educational works, regardless of the process of reproduction. As a result of the broad definition of protected works, copyright protection has been granted to:

- a) writings (as in dictionaries, prayer books, almanacs and articles);
- b) musical works and plays;
- c) cinematographic, choreographic and pantomime works (as long as these works have been materialized in a tangible form);
- d) drawings, paintings and sculptural works;
- e) architectural, artistic or scientific works;
- f) maps, plans and other printed matter;
- g) plastic works, photographs, engravings and phonograms;
- h) titles and characters as an integral part of a work;
- i) works of applied art;

- j) computer software and databases; and
- k) derivative works, new versions, compilations, and translations.

As a general rule, the IP Law grants rights to the author for life and to his or her heirs and successors in title for seventy years as of 1 January following the author's death.

In order for a foreign work to qualify for copyright protection in Argentina, the conditions for protection under a copyright convention to which Argentina has adhered must be satisfied or the author must have complied with the formalities required for protection in the country where the work was first published (provided that he is a national of a country recognising copyright).

3. PROTECTION OF IP RIGHTS

3.1 REGISTRAR PATENTS

The procedure for the grant of patents under the Argentine Patent Act is based on the prior examination by an administrative agency and on the possibility of opposition by third parties.

The procedure begins by means of the filing of a written application with the National Industrial Property Institute. This application must include:

- a) a formal request for the grant of a patent of invention;
- b) the name and personal data of the applicant;
- c) the domicile of the applicant;
- d) an *ad hoc* domicile of the applicant for purposes of the patent procedure;
- e) the name and domicile of the inventor;
- f) the name or title of the invention;
- g) if the invention is an addition to a prior invention, the identification of this basic prior invention;
- h) if the application refers to an invention which is part of a prior application, the number of such prior application;
- i) if the application results from the conversion of a prior utility model application, the number of this application;
- j) if a priority is claimed under the Paris Convention, the information necessary to determine the existence of such priority;
- k) if the application refers to microorganisms, the identification of the institution where they are deposited, and of the date and registration number of such deposit;
- l) the name of the person or agent authorized to act in the procedure, as well as the number of their identification documentation;
- m) the signature of the applicant;
- n) a technical description of the invention, which must include a description of the technical field to which the invention belongs, a description of the state of technology in that field including an indication of the documents in which such technology is disclosed, a detailed and complete description of the invention indicating the advantages over the prior state of technology, and a brief description of the graphs and drawings included in the application. The description of inventions must be comprehensible for a person knowledgeable in the field to which the invention pertains;

- o) one or more claims;
- p) the technical drawings necessary for the understanding of the invention;
- q) a summary of the description of the invention;
- r) a reduced-scale reproduction of the drawings included with the application, for publication purposes.
- s) if the application refers to microorganisms, a certificate of the deposit of the microorganisms in a depository institution;
- t) evidence of the payment of the application fees;
- u) certified copies of the elements on the basis of which priorities are claimed.

The patent claim may be filed by the inventor or by his assignees, heirs or legatees. They may act personally or by means of agents. An inventor who is the original owner of the invention, pursuant to the rules on employee inventions, may also file a patent application.

3.2 REGISTRAR TRADE MARKS

Full protection for trade marks is obtained under Argentine law by means of the registration of the trade mark.

The registration procedure begins with a filing application to be presented at the National Industrial Property Institute. One application must be filed for each class. The application must include the name, real domicile and special domicile within the City of Buenos Aires of the applicant, as well as a description of the trade mark and the indication of the goods or services to which it will apply. The registration application may also be filed in specially authorized post offices located in the provinces, in which case the application will be recorded in a special book located at such offices and then sent for purposes of the continuation of the registration procedure to the National Industrial Property Institute.

The application must also include the elements necessary for the printing of the publications required by the Trade mark Act. Also, if the trade mark includes a drawing, image or engraving, ten copies of such elements must be included together with the application.

The special domicile to be included together with the application is valid for purposes of establishing local jurisdiction and for purposes of serving notice with regard to judicial complaints related to voidness, revindication or lapsing of the trade mark, as well as with regard to notices related to the registration procedure. However, in the case of the aforementioned judicial complaints, the special domicile will not prevent the applicability of the procedural rules which grant more extended terms to defendants located outside the court's jurisdiction for purposes of answering the complaint. The defendant's real domicile will be used to determine the applicability of such extended terms.

If an opposition petition has been filed against the trade mark registration application, in order to try to obtain the withdrawal of such opposition, the applicant has to file in court a complaint against the opposition petitioner, requesting the lifting of the opposition. If such complaint is not filed within one year from the moment the applicant is notified of the opposition petition, the trade mark registration application will lapse, unless the applicant and the opponent have previously reached an agreement to submit their dispute to the decision of the administrative registration authorities. The trade mark registration application will also lapse if the judicial

proceedings terminate for lack of necessary procedural action in the lawsuit started by the applicant.

The complaint requesting the lifting of the opposition is filed at the National Industrial Property Institute, and is sent by this agency, together with the relevant documentation and administrative file, to the Federal Court for Civil and Commercial Matters of the City of Buenos Aires. This complaint is governed by the rules on ordinary proceedings. Once a decision is reached, it is notified to the registration authorities, for purposes of implementation.

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