

Decree No. 6/2004 of June 30

INDUSTRIAL PROPERTY REGULATION

(Decree No. 6/2004 of June 30)

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Taking into account Article 35 of the Law Relating to Industrial Property, approved by Law No. 4/2001 of December 31;

In these terms, and in the use of the faculties granted by Article 111(c) of the Constitution, the Government decrees and I enact the following:

CHAPTER I

Patents for Inventions

Article 1

Under the terms of Article 5 of Law No. 4/2001 of December 31, relating to Industrial Property, the documents to be submitted along with applications for the grant of a patent for an invention must meet the following formal requirements:

- (a) The claims must: be based on the description; be clear and concise, written in Portuguese and correctly drawn up; define the subject matter of the protection requested; indicate the technical characteristics of the invention and; if there is more than one claim, be numbered in Arabic numerals. Claims must also contain:
 - i. a preamble referring to the subject matter of the invention and the technical characteristics necessary for the definition of the elements claimed but ,which combined, form part of the state of the art;
 - ii. a characterizing part, preceded by the expression “characterized by”, which sets out the technical characteristics which, in connection with the characteristics indicated in the preceding indent, determine the extent of the protection requested.
- (b) The claims must meet the following requirements:
 - i. they must be typed or printed single-sided, in dark, indelible ink, with symbols or graphic characters and chemical and mathematical formulae being written by hand or drawn if necessary;
 - ii. they must be produced on pliable, strong, white, smooth, matte, durable sheets of A4 size (29.7 cm x 21 cm) paper, used in such a way that the shorter edges are at the top and bottom (vertical), and the margins shall be as follows:
 - (i) top: 2 cm to 4 cm
 - (ii) left side: 2.5 cm to 4 cm;
 - (iii) right side: 2 cm to 3 cm;
 - (iv) bottom: 2 cm to 3 cm.
 - iii. they must not contain references to weights or measures which are not part of the International System of Units;
 - iv. they shall, if the number of pages requires it, form a booklet, bound in such a way as not to impede reading;
 - v. they must not refer to the description or drawings, except where absolutely

necessary. If the patent application contains drawings, the technical characteristics referred to in the claims must, in principle, be followed by reference signs in brackets in order to improve understanding of the claim. The reference signs must not be construed as limiting the claim;

- vi. they must contain the date and the signature of the applicant or his agent on the last page.
- (c) The description must meet the following requirements:
- i. it must be written in Portuguese and correctly drafted;
 - ii. there must be reference to the title or name of the invention;
 - iii. it must indicate, clearly and concisely, without reservation or omission, everything that constitutes the subject matter of the invention, so that any person skilled in the art may execute it. Furthermore, it must contain a detailed explanation of each of the figures of the drawings, using for this purpose reference numbers which indicate the constituent elements of the invention;
 - iv. it must not contain any reference to weights or measures which are not part of the International System of Units, or any explanatory figures;
 - v. it must be typed or printed single-sided, in dark and indelible ink, symbols; only graphic symbols and characters and chemical and mathematical formulae may be handwritten or drawn, if necessary;
 - vi. the margins shall be as follows:
 - vii. (i) top: 2 cm to 4 cm;
(ii) left side: 2.5 cm to 4 cm;
(iii) right side: 2 cm to 3 cm;
(iv) bottom: 2 cm to 3 cm;
 - viii. it must be submitted on pliable, strong, white, smooth, matte, durable sheets of A4 size (29.7 cm x 21 cm) paper, used in such a way that the shorter edges are at the top and bottom (vertical);
 - ix. it must, if the number of pages requires it, form a booklet bound in such a way as not to impede reading;
 - x. it must contain the date and the signature of the applicant or his agent on the last page.
- (d) Drawings must meet the following requirements:
- i. they must be accurate and clear, executed on a sheet or sheets of strong, white, smooth A4-size (29.7 cm x 21 cm) paper, in black lines, without colors or watercolors, so that an unlimited number of copies may be reproduced clearly;
 - ii. pages containing drawings must not have any squares and the margins shall be as follows:
 - (i) top: 2,5 cm;
 - (ii) left side: 2,5 cm;
 - (iii) right side: 1.5 cm;
 - (iv) bottom: 1 cm;
 - iii. they must: be made up of the strictly necessary number of figures, of sufficient size for a reproduction to be made with a linear reduction in size to two-thirds to allow easy understanding of the details; be separated by sufficient space to be distinguishable one from the other, numbered according to their positions, continuously independent of the number of pages, and; contain reference numbers indicating the constitutive elements of the invention whenever necessary;

- iv. figures, letters, numerals and any other indications must be set out so that they may be read in the direction in which the page is set out;
 - v. they must not contain legends, explanatory mentions, or reference signs which are not essential for the understanding of the invention;
 - vi. they must have a drawing of the scale, if one is referred to;
- (e) The invention summary shall serve exclusively for the purposes of technical information and shall not be taken into consideration for any other purpose, in particular for the determination of the scope of the protection requested, and must meet the following requirements:
- (i) it must consist of a brief account of the contents of the description, claims and drawings, but should preferably be no longer than 150 words;
 - (ii) it should refer to the title or name of the invention;
 - (iii) it should indicate the field of the art to which the invention belongs, together with its main use, and should be drafted in such a way as to allow for clear understanding of the technical issue it is designed to solve;
 - (iv) it should, where appropriate, contain a reproduction of the chemical formula or figures or, exceptionally, the formulae or figures which have been put forward for publication alongside the summary. The National Industrial Property Service may also decide to publish other chemical formulae or figures, should it feel that they better characterize the invention. The main characteristics referred to in the text of the summary and illustrated in the figure(s) must in principle, be followed by reference signs in brackets in order to improve understanding;
 - (v) it must be accompanied by image setter film or another carrier if required by the National Industrial Property Service, bearing the formulae or figures referred to in the preceding indent, which must be no larger than 8 cm high by 8 cm wide and no smaller than 3 cm high by 3 cm wide;
 - (vi) it must constitute an effective selection tool in the technical field in question and must be drafted with this purpose in mind.
- (f) in exceptional circumstances, the text of the application, claims, description and summary may be handwritten, on the condition that the text is sufficiently legible to ensure that it can be read with ease.;
- (g) All documentation must be written in Portuguese and submitted in duplicate, except for the summary which shall be submitted in triplicate.

Article 2

1. The same application may not contain more than one patent request, and the patent must contain only one single general inventive concept.
2. If there is a violation of the provisions of paragraph 1, the applicant shall be notified under Article 30 of the Industrial Property Law to submit one or several new patent applications, as the case may be, in order to ensure compliance with the provisions of this Article through the division of the subject matter claimed.
3. For each new divisional application the applicant shall pay the fees provided for in this Implementing Regulation.

4. The number and date of the original application must be indicated in the request contained in the divisional application, in addition to the elements required under Article 5(2)(a) of the Industrial Property Law.

Article 3

1. Applications for patents for inventions may be examined on the basis of search reports prepared by similar Industrial Property bodies. However, the decision to grant or refuse patents lies exclusively with the Director of Industry of Sao Tome and Principe, after the National Industrial Property Service has issued an expert opinion.
2. The granting of patents for inventions shall involve a simple legal presumption of the novelty and inventive step of the subject of the invention.

Article 4

Patents for inventions shall be refused:

- (a) where the subject matter of the invention has been excluded from patentability in accordance with the provisions included in Article 2(3)(a), (b) and (c) of the Industrial Property Law;
- (b) where the subject matter of the invention violates the conditions for patentability stipulated in Article 3(1) of the Industrial Property Law;
- (c) where the provisions of Article 3(5) of the Industrial Property Law apply to the subject matter of the invention;
- (d) should it be ascertained that there has been a violation of the provisions of Article 5(2)(b) of the Industrial Property Law;
- (e) where the applicant fails to comply, within three months starting from the date of the letter, with any notification issued under Article 30 of the Industrial Property Law;
- (f) where the claimant does not pay the fees required in light of the application of the Industrial Property Law and in harmony with the values stipulated in the present Regulation.

Article 5

1. Public disclosure of applications for patents for inventions in the Official Bulletin shall take place 18 months after the date of priority claimed, or if there is no priority claim, 18 months after the date of the filing of the application.
2. The publication of the invention summary and of the chemical formulae, or the figures which accompany it, shall be deemed to be public disclosure of the patent application, pursuant to Article 1(e)(iv) of the present Law.

Article 6

1. Mentions of the grants of patents for inventions must not be published prior to the expiry of the complaint period, which shall be of three months starting from the date of publication of the relevant application in the Industrial Property Bulletin.
2. In the event of a complaint being lodged against the grant of a patent, the National Industrial Property Service shall immediately notify the applicant, giving him a time period of three months, from the date of notification, in which to submit a response. Once the response has been received, or once the above-mentioned time period has expired, the National Industrial Property Service may proceed with the publication of the mention of the grant or refusal.
3. The documentation presented in the complaint and in the response shall be provided in duplicate.

4. The publication of the mention of the refusal of a patent application may be carried out at the same time as the publication of the application, or later. Appeals against decisions to refuse a patent may only be lodged with the courts.

CHAPTER II

Industrial Designs

Article 7

In accordance with Article 12 of the Industrial Property Law, documents to be submitted along with applications for the registration of industrial designs must meet the following formal requirements:

- (a) applications must be accompanied by the following documents:
 - i. two drawings or photographs of the subject matter relevant to the design registration application;
 - ii. image setter film or another carrier, if such is required by the National Industrial Property Service, which must be no larger than 8 cm high by 8 cm wide and no smaller than 3 cm high by 3 cm wide;
 - iii. a descriptive document referring to the title or name of the industrial design, its novelty and the type or types of products for which the industrial design must be used;
 - iv. a document serving as proof of authorization by the copyright holder, if the design is a reproduction of a work of art that is not in the public domain, or generally, by the respective author should he not be the applicant;
- (b) the drawings and photographs referred to in indent (i) of the above subparagraph must comply with the general requirements in terms of size and characteristics contained in Article 1(d);
- (c) where a combination of colors is claimed in an application for registration of an industrial design, the drawings or photographs referred to in indent (i) of subparagraph (a) must display the colors claimed;
- (d) applicants may attach other photographs, taken from angles which help to form a more precise idea of the design, to the application, without prejudice to the obligation to attach those photographs which are essential;
- (e) in exceptional circumstances the text of the application and the descriptive document may be handwritten, on the condition that the text is sufficiently legible to ensure that it can be read with ease;
- (f) the applicant may include in the application a request for exemption from the requirement to submit a sample of the subject matter incorporating the industrial design, without prejudice to the right of the National Industrial Property Service to require, at any moment, that the provisions of Article 12(1), of the Industrial Property Law be applied.
- (g) all documentation must be drafted in Portuguese and submitted in duplicate, except for the descriptive document and the drawings or photographs of the subject matter relevant to the design registration application, which shall be submitted in triplicate.

Article 8

1. A single registration may include designs made up of various parts which are essential to form a whole.
2. A single registration may include up to a maximum of ten industrial designs, which must share the same use or application.

3. The model of a subject matter and the design which may possible be applied to it may be registered separately.
4. Industrial designs may not be simultaneously registered as patents of inventions, and vice-versa.

Article 9

1. The registration of an industrial design shall involve a simple legal presumption of novelty.
2. The registration shall also imply that the design meets the requirement of industrial application.
3. The registration shall be based on an order issued by the Director for Industry, after the opinion of an expert from the National Industrial Property Service has been issued.

Article 10

An industrial design shall be rejected:

- (a) if the subject matter of the industrial design lacks novelty, in accordance with the provisions of Article 10(1) of the Industrial Property Law;
- (b) if the provisions of Article 10(2) of the Industrial Property Law are applied to the subject matter of the industrial design;
- (c) if it should be ascertained that there has been a violation of the provisions of Article 11(2) of the Industrial Property Law;
- (d) if the applicant does not comply, within a period of three months starting from the date of the letter, with any notification which has been drawn up under Article 30 of the Industrial Property Law;
- (e) if the applicant does not pay the fees required in light of the application of the Industrial Property Law and in harmony with the values stipulated in the present Regulation.

Article 11

1. Public disclosure in the Industrial Property Bulletin of applications for the registration of industrial designs must be carried out one year after the date of priority claimed, or in the event that there is no priority claim, one year after the date of the filing of the application.
2. The publication of the descriptive document, and of one or several of the drawings or photographs of the subject matter the design for which has been put forward for registration, shall be deemed to be public disclosure.

Article 12

The provisions of Article 6 shall be applied *mutatis mutandis* to: the publication of the mention of the registration of an industrial design; the claims/oppositions process; the publication of the mention of refusal, or even, to appeals against refusal orders.

CHAPTER III

Trademarks and trade names, geographical indications and appellations of origin

Article 13

1. The National Industrial Property Service shall carry out the study of files relating to procedures which shall consist mainly and compulsorily of the examination of the trade mark registered and its comparison with trademarks registered for the same products or services, after which an opinion shall be formed on the files relating to procedures and submitted for a ruling of grant or refusal.

2. The procedure shall be similar in the case of trade names.

Article 14

Applications for the registration of trademarks or trade names must be set out in a request written in Portuguese, which must contain identification of the applicant, whether a natural or legal person, along with his/its name, address and headquarters and other identifying elements.

Article 15

In the case of trademark applications, the products or services for which they are intended and their respective class must be referred to.

Article 16

Trademark applications may contain products or services belonging to different classes. A fee must be paid for each class of product or service.

Article 17

On receipt of a registration application, the application shall be allocated an entry number, and the verbal expression shall be noted in a search catalogue. There shall be another catalogue for trade names and yet another for trademarks, both organized in alphabetical order.

Article 18

Figurative marks must also be grouped together in their own file by order number.

Article 19

Graphic representations of trademark must be submitted, whenever possible, in the form of a photocopy or drawing, one of which shall be printed or pasted in the publication sheet and the other in the application.

Article 20

The size of the graphic representation of the trademark shall not exceed 8 cm high by 8 cm wide, nor be smaller than 3 cm high by 3 cm wide.

Article 21

Once the registration application has been made public, there shall be a period of 90 days during which complaints may be made against the application, to be presented in duplicate.

Article 22

The applicant may respond, within a period of 90 days, after learning, through notification, of the complaint submitted.

Article 23

The applicant shall be notified of the grant/refusal order.

Article 24

Applications for the registration of trademarks or names shall be rejected if they fail to comply with the conditions contained in the present Regulation or in the Industrial Property Law.

Article 25

The rules governing trademarks shall, with the necessary adaptations, apply to “Geographical indications” and “Appellations of Origin”.

CHAPTER IV

Common Provisions

Article 26

1. Only the following persons may take action in connection with patent procedures:
 - (a) the party or rights-holder resident in Sao Tome and Principe;
 - (b) the industrial property agent resident in Sao Tome and Principe.
2. Without prejudice to the provisions of Article 28 of the Industrial Property Law, if the habitual residence or main place of activity of an applicant is located outside of Sao Tome and Principe, he may request the Director for Industry to grant a period of one year to allow for the indication of the name of an agent resident in Sao Tome and Principe, who shall represent him before the National Industrial Property Service.
3. The applicant may request the Director for Industry to extend the period referred to in the preceding paragraph.

Article 27

1. Upon submission of an application concerning any of the forms of Industrial Property, an individual applicant resident in Sao Tome and Principe may request, in a communication addressed to the Director for Industry, a reduction of 75% of the value of the fees due, on the condition that he can prove that he has only modest financial resources.
2. The applicant shall not be charged a submission fee for submitting such a request.

Article 28

Failure to comply within the period established, following notification by the National Industrial Property Service, shall be grounds for refusal of any application for Industrial Property rights.

Article 29

The periods established in the notifications, as well as those set out in this Regulation, shall be continuous.

Article 30

Following the grant of Industrial Property rights, the service shall issue the respective documents and deliver them to the owners, on payment of the fee due.

Article 31

The rights in the various forms of Industrial Property shall lapse:

- (a) due to the expiry of the period of duration;
- (b) due to failure to pay fees.

Article 32

1. Any person may consult or obtain copies of:
 - (a) the registrations in the various forms of Industrial Property;
 - (b) his files relating to a procedure, or those of third parties which are not trade secrets.
2. Any person may request searches of the documentation available at the National Industrial Property Service.
3. The process of obtaining information, copies and certificates or the performance of a search, shall imply the payment of the fees set out in this Regulation.

Article 33

Civil servants employed at the National Industrial Property Service shall be prohibited from taking the place of agents, or from cooperating illegally with them, directly or indirectly, concerning issues with regard to which the Service is competent.

Article 34

The Industrial Property Bulletin may be published in the form of an announcement, a journal published by the Service or as a supplement to the Journal of the Republic.

Article 35

In accordance with the provisions of Article 35 of the Industrial Property Law, the table of fees of the National Industrial Property Service, which appears as an annex, is approved and shall form an integral part of the present Decree.

Article 36

This Decree shall come into force on its date of publication in the Journal of the Republic.

Seen and approved in the Council of Ministers, September 18, 2003.

Prime Minister and Head of Government, *Maria das Neves Ceita Batista de Sousa*.

Minister for Trade, Industry and Tourism, *Júlio Lopes Lima da Silva*.

Let it be published.

President of the Republic, *Fradique Bandeira Melo de Menezes*.