

MADAGASCAR

Decree No. 92-993 Implementing Ordinance No. 89-019 of July 31, 1989, Establishing Arrangements for the Protection of Industrial Property in Madagascar (of December 2, 1992, as last amended by Decree No. 95-057 of January 17, 1995)*

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TITLE I GENERAL PROVISIONS

1.—(1) This Decree specifies certain provisions of Ordinance No. 89-019 of July 31, 1989, on the protection of industrial property in Madagascar, hereinafter referred to as “the Ordinance.”

(2) The term “Office” as used in this Decree shall mean the agency responsible for administering industrial property in Madagascar, as referred to in Article 2 of the Ordinance.

2.—(1) Documents, instruments and correspondence relating to patents and inventors’ certificates shall be written, subject to the provisions of Article 82 of this Decree, in the Malagasy language or the French language. The Office may request that documents written in Malagasy be translated into French or vice versa.

(2) Documents, instruments and correspondence relating to trademarks, industrial designs and trade names shall be written in Malagasy accompanied by a translation into French or in French.

(3) If documents are written in languages other than those specified in paragraphs (1) and (2), above, the applicant shall enjoy, in accordance with Article 13 of this Decree, a period of time in which to submit a translation in one of the prescribed languages.

3.—(1) The nature and amount of fees is laid down in Annex I¹ to this Decree (hereinafter referred to as “Annex I”). They may be amended by joint order of the Minister responsible for industry and the Minister responsible for finance.

(2) Where it is required that a fee be paid within a given period of time and the due date falls on a Sunday, a public holiday or a non-working day, the following working day shall be deemed the due date.

(3) In addition to the fees referred to in paragraph (1), above, the Office may, as necessary, institute, amend and levy any fees relating to full or part copies and publications with respect to the various industrial property titles issued by the Office.

(4) The fees referred to in paragraphs (1) to (3), above, shall be payable to the Office.

4. The model forms provided for by this Decree are contained in Annex II² (hereinafter referred to as “Annex II”). Copies thereof may be obtained from the Office.

5.—(1) The functions of industrial property agent or representative, within the meaning of Article 132 of the Ordinance, may be exercised by industrial property consultants or other natural or legal persons capable of exercising such functions.

(2) In order to exercise the functions of industrial property agent or representative, industrial property consultants or other natural or legal persons capable of exercising those functions shall be required to submit a request for approval by the Office and entry in a special register. The conditions for approval of industrial property agents or representatives shall be laid down by an order issued by the Minister responsible for industry.

6. If the filing of an application for an industrial property title or any operation concerning such application or such title is carried out by an agent or representative, powers set out in due form and in accordance with the prescribed form shall be submitted to the Office.

7.—(1) In applications for an industrial property title, the names of natural persons shall be constituted by their surnames and their forename or forenames, whereby the surname shall precede the forename or forenames. The names of legal persons shall be constituted by their official and full business name.

(2) Addresses shall be given in such a way that the normal conditions of postal delivery may be satisfied; they shall contain all the necessary administrative data, including all street numbers; addresses shall also contain the telephone numbers together with, where appropriate, the teleprinter and facsimile transmission numbers.

(3) Nationality shall be stated by giving the name of the State of which the person is a national; legal persons shall give the name of the State under whose laws they are constituted and in which they have their registered offices.

(4) The place of residence shall be stated by giving the name of the State of which the person is a resident.

8. A document may be signed for or on behalf of a legal person or an association by a single duly authorized person who shall be required to provide proof of his powers to sign alone.

9.—(1) The Office shall keep the following registers:

(a) Register of Patents and Inventors' Certificates;

(b) Register of Trademarks;

(c) Register of Industrial Designs;

(d) Register of Trade Names;

(e) Register of Industrial Property Consultants and Other Natural and Legal Persons Approved as Agents and Representatives.

(2) Consultation of the Registers and of certain elements in the files shall be free of charge. Extracts from the Registers may be obtained against payment of the fee laid down in Annex I.

(3) In addition to the entries in the Registers referred to in paragraph (1), above, with respect to the operations carried out in application of this Decree, the following entries shall be made in those Registers for all industrial property titles governed by this Decree:

(a) change of name or address of applicant or owner;

(b) change of business name of applicant or owner;

(c) withdrawal of application;

(d) relinquishment of application;

(e) transaction concerning industrial property title;

(f) cancellation of industrial property title;

(g) removal of industrial property title.

(4) The Register referred to in Article 9(1)(e) of this Decree shall contain the entry of any change of name, business designation or address concerning industrial property consultants approved by the Office.

(5) Entry of instruments concerning licenses and assignments and those concerning court decisions shall be made in the Registers referred to in Article 9(1)(a) to (d) of this Decree.

(6) The Office shall publish an Official Gazette of Industrial Property at regular intervals. The Office shall lay down the frequency of its publication together with the selling price per copy or through subscription.

(7) Any entry made in the Registers referred to in Article 9(1)(a) to (d) of this Decree shall be mentioned in the Official Gazette of Industrial Property.

10. Applications for patents, certificates of addition, inventors' certificates, trademarks and industrial designs filed in Madagascar shall use, respectively, the International Patent Classification established by the Strasbourg Agreement of March 24, 1971, the International Classification of Goods and Services for the Purposes of the Registration of Marks, established by the Nice Agreement of June 15, 1957, and the International Classification for Industrial Designs, established by the Locarno Agreement of October 8, 1968.

TITLE II
PATENTS AND INVENTORS' CERTIFICATES

Chapter I
Filing of Application

Section I
General Provisions

11. Applications for a patent or an inventor's certificate shall be made using the prescribed form, given at Annex II. Such application shall contain the following information:

(a) type of industrial property title sought;

(b) title of the invention;

(c) surname and forename or business name, together with the full address, nationality and place of residence of the applicant. Where the applicant is not himself the inventor, the application shall state how his right to obtain a patent or inventor's certificate has been acquired; the Office may require from him proof of his right to obtain such patent or such certificate;

(d) the surname and forename, together with the full address, place of residence and nationality of the inventor;

(e) where appropriate, the surnames and forenames or the business name, together with the full address, of the agent or representative;

(f) where appropriate, the claim or claims to priority;

(g) number, filing date and date of issue of the main patent if the application seeks to protect an improvement in the form of a certificate of addition;

(h) symbol or symbols of the International Patent Classification; the Office may amend the symbols given by the applicant;

(i) identification of the fees paid;

(j) list of the documents transmitted;

(k) applicant's signature.

12. The application shall be accompanied by:

(a) a description of the invention, with the claim or claims, where appropriate, the drawing or drawings referred to in the description and an abstract of the invention intended for publication in accordance with Articles 16 to 28 of this Decree;

(b) where appropriate, the declaration of priority drawn up in accordance with the form prescribed in Annex II, together with other priority documents, under the conditions and within the time limits laid down in Article 22 of the Ordinance;

(c) the voucher evidencing payment of the prescribed fees and enabling a receipt to be drawn up and to be authenticated by the Office in accordance with Article 23(2) of the Ordinance.

13.—(1) The Office shall establish as the filing date the date on which the application is received on condition that the filing fee has been paid at the time of receipt and that the application:

(a) is drawn up in accordance with the prescribed form and contains the elements referred to in Article 11 of this Decree;

(b) is written in Malagasy or in the French language;

(c) comprises at least one copy of the description, of the claim or claims and of any drawings to which the description or the claims refer.

(2) Where the conditions set at paragraph (1) of this Article are met, the Office shall give a filing number and enter the date, time and place of filing on a copy of the application to be returned to the applicant. Such copy shall be accompanied by a receipt evidencing payment of the fees and bearing the authenticating stamp of the Office;

(3) Where the Office requires a translation of an application filed in Malagasy into the French language or of an application filed in French into the Malagasy language, the applicant shall continue to enjoy the filing date referred to in paragraph (2), above, if the translation is submitted to the Office within a period of two months as from the date of the request. If that time limit is not complied with, the effective filing date shall be that on which the translation is received.

(4) Notwithstanding paragraph (3), above, and subject to the provisions set out in Article 22 of the Ordinance, where the conditions laid down in paragraph (1) of this Article are not met, the Office shall invite the applicant to regularize his application within a period of two months in the case of applications made on the national territory and of four months in the case of applications originally made abroad, as from notification, with a view to allocating a filing date.

(5) If the time limits referred to in paragraph (4), above, are satisfied by the applicant, the filing date shall be the date on which the application has been effectively regularized.

(6) If the applicant has not complied with the invitation by the Office within the time limits referred to in paragraph (4), above, the application shall be declared inadmissible.

(7) Notwithstanding paragraph (3), above, where the application refers to drawings and such drawings are not included in the application, the Office shall invite the applicant to submit the missing drawings within the time limits referred to in paragraph (4), above; if the applicant complies with such invitation, the Office shall allocate as filing date the date on which the drawings are received; failing that, the Office shall allocate as filing date the date on which the application was received and shall treat any reference to such drawings as inadmissible.

(8) Where the Office ascertains that one or more of the conditions set out in Articles 11 and 12 of this Decree have not been satisfied, it shall invite the applicant to regularize his application within the time limits set out in paragraph (4) of this Article.

(9) If the applicant does not comply with such invitation, the application shall be declared inadmissible by the Office.

14.—(1) Where the filing is made in person, the filing date shall be the date of receipt by the Office.

(2) Where the filing is made by postal means, the date and time of filing shall be that on which the Office receives the envelope containing the application.

(3) Paragraphs (1) and (2), above, shall also apply to the filing of trademarks, industrial designs and trade names.

15.—(1) The application and any declarations or documents accompanying the application shall be filed in three copies; the Office may request the applicant to provide additional copies.

(2) All elements contained in the application shall be presented in a manner enabling them to be reproduced by the Office.

Section II *The Description*

16.—(1) The description shall comprise:

(a) the title of the invention as given in the application;

(b) reference to the technical field to which the invention relates;

(c) reference to the background art, known to the applicant, which may be considered useful for understanding, searching and examining the invention; the documents that reflect the background art shall be cited wherever possible;

(d) a disclosure of the invention as claimed enabling the technical problem and its solution to be understood; where appropriate, the advantageous effects of the invention with reference to the background art shall be stated;

(e) a brief description of the drawings, if any;

(f) a description of the best way envisaged and known to the applicant for carrying out the invention; the description should normally comprise examples and references to the drawings if any;

(g) a description of the way in which the invention is capable of application in industry, if such application is not obvious from the description or the nature of the invention.

(2) The description shall be presented in the manner and order set out in paragraph (1), above, unless the nature of the invention does not admit of a more understandable and more economic presentation.

17.—(1) Where the understanding of the invention requires the use of the customary units of measure, such units shall be expressed in the following manner:

(a) the units of the metric system shall be given in decimal units;

(b) temperature shall be expressed in degrees Celsius or centigrade;

(c) density shall be reduced to the specific weight;

(d) the values for heat, energy, light, sound, magnetism as also mathematical formulae and electrical units shall comply with the rules generally admitted in international practice;

(e) for chemical formulae, the symbols for elements, atomic weights and molecular formulae in general use shall be employed;

(f) use shall be made alone of the terms, signs and technical symbols generally accepted in the field in question and the terminology and the signs used in the patent application shall be consistent.

(2) Where non-customary units of measure are used they shall be accompanied by a definition or a bibliographic reference.

18. The description may not comprise:

(a) drawings within the text or in the margin, with the exception of developed graphical, chemical or mathematical formulae;

(b) alterations or overwriting;

(c) non-initialled margin references or crossed out words;

(d) pages which do not bear the signature of the applicant or his agent.

19.—(1) The text of the description shall be typewritten or printed on one side only of A4-sized paper (29.7 cm x 21 cm) which shall not be folded.

(2) The pages of the text shall comprise a left-hand margin of between 3 and 4 cm.

(3) The other margins shall be of 2 cm.

(4) A space equivalent to 1.5 lines shall be left between lines of the text of the description; these lines shall be numbered in fives at the beginning of the line.

(5) Writing shall be indelible and of black color.

(6) All sheets shall be numbered in arabic numerals.

(7) All text shall be drawn up in characters in which the capital letters are at least 0.21 cm high.

Section III The Claims

20. The content of the claims shall determine the scope of protection afforded by the patent or the inventor's certificate; however, the description and the drawings shall serve, where appropriate, to interpret the claims.

21. The following rules shall be adopted for the presentation of the claims:

(a) the claims shall be drafted in terms of the technical features of the invention;

(b) they shall be drafted as clearly and concisely as possible on one side of A4-sized paper and shall be entirely supported by the description, in accordance with Article 18(2) of the Ordinance;

(c) they shall be ordered in a systematic, clear and logical manner and shall be numbered continuously in arabic numerals. Where there is only one claim, it shall be designated "sole claim";

(d) they shall not, as a general rule, contain either references to the description or the drawings or, in particular, terms such as, for example, "as described in part ... of the description" or "as illustrated in figure ... of the drawings";

(e) the reference signs referring, in the drawings, to the technical features of the invention shall be included, in brackets, in the claims, if the intelligibility of the claims is thereby increased. They shall not have the effect of limiting the claims.

22. Wherever appropriate, the claims shall contain:

(a) a preamble giving the designation of the subject matter of the invention and the technical features that are necessary for the definition of the claimed elements, but which, in combination, are part of the background art;

(b) a characterizing portion—preceded by the words “characterized in that,” “characterized by,” “wherein the improvement comprises,” or any other words to the same effect, stating concisely the technical features which, in combination with the features stated under item (a), above, it is wished to protect.

23.—(1) Any claim which includes all the features of one or more other claims (claims in dependent form, hereinafter referred to as “dependent claims”) shall do so by a reference, if possible at the beginning, to the other claim or claims and shall then state the additional features claimed. Any dependent claim which refers to more than one other claim (“multiple dependent claim”) shall refer to such claims in the alternative only. Multiple dependent claims shall not serve as a basis for any other multiple dependent claim.

(2) Any dependent claim shall be construed as including all the limitations contained in the claim to which it refers or, if the dependent claim is a multiple dependent claim, all the limitations contained in the particular claim in relation to which it is considered.

(3) All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most practical way possible.

24. The following may be included in one and the same application within the meaning of Article 21(3) of the Ordinance:

(a) an independent claim for one or more products, an independent claim for the process or processes devised specifically for manufacturing such product or products and an independent claim for applications of such product or products;

(b) an independent claim for one or more processes, an independent claim for means specifically devised for carrying out such process or processes and an independent claim for the product or products resulting from the carrying out of such processes.

Section IV The Drawings

25. In application of Article 19 of the Ordinance, the following rules shall be complied with for drawings:

(1) the original drawing shall be executed on white, smooth and non-shiny A4-sized paper (29.7 cm x 21 cm) and any duplicates shall be reproduced on white paper;

(2) the drawings shall be executed within a useful surface area that is bounded, without drawing frames, by margins of between 3 and 4 cm on all four edges of the sheet, adopting the technique of line drawing executed in indelible dark strokes without colorings, without scratching out or overwriting;

(3) cross sections shall be indicated by hatching which should not prevent the reading of the reference signs and the leading lines;

(4) the scale of the drawings and their graphical execution shall be such that a photographic reproduction enables all details to be distinguished without difficulty. If the scale is given on a drawing, it shall be represented graphically;

(5) the numbers, letters and reference signs appearing on the drawings shall be simple and clear; brackets, circles or inverted commas shall not be used in association with numbers and letters;

(6) the reference signs used in the drawings shall correspond to those used in the description or the claims;

(7) where there is more than one figure for the understanding of the invention, those figures must be clearly separated one from the other by a 1 cm space and numbered independently of the sheet numbering;

(8) where a figure comprises a number of detached parts, those parts shall be joined by a brace;

(9) each page of drawings shall be signed and dated by the applicant after the phrase “certified in compliance with the invention.”

26.—(1) The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as “water,” “steam,” “open,” “closed,” “section on AB” and, in the case of electric circuits and block schematic or flowsheet diagrams, a few short catchwords indispensable for understanding.

(2) Each word used shall be placed in such a way that if translated, its translation may be glued over it without covering any line of the drawings.

Section V The Abstract

27. The abstract constitutes a concise summary of the technical content of the invention. It shall identify the technical field to which the invention belongs and shall enable ready understanding of the problem raised, the gist of the technical solution provided by the invention and the principle uses of the invention. It may, where appropriate, state the chemical formula which, among those contained in the application, best characterizes the invention.

28.—(1) The abstract serves exclusively for the purposes of technical information and publication.

(2) The abstract shall be as concise as disclosure permits and, preferably, shall not exceed 20 lines.

(3) It shall be accompanied, where appropriate, by the most significant of the drawings supplied by the applicant.

(4) It shall not constitute a patent document and may not, therefore, be taken into account to claim the rights deriving from the patent.

Section VI Unity of Invention

29.—(1) The Office shall examine whether the application concerns only one invention pursuant to Article 21(1) of the Ordinance.

(2) If the application contains more than one invention, the Office shall invite the applicant, pursuant to Article 21(2) of the Ordinance, by written notification, to divide his application into as many applications as there are separate inventions, within the time limits set out in Article 13(4) of this Decree.

(3) If, on expiry of those time limits, the applicant has not replied satisfactorily to the notifications from the Office, the application shall be deemed inadmissible.

30. Up to the date of issue of a patent or an inventor's certificate, the applicant may, on his own initiative, file applications that divide up his initial application, on payment of the fee laid down in Annex I.

31. Where an application is divided up in accordance with Articles 29 and 30 of this Decree, each divisional application shall comply with the requirements of Articles 11 and 12 of this Decree.

Section VII Claim to Priority

32. The declaration of priority shall state, in addition to the information required by Article 22(1)(i) of the Ordinance, the following particulars:

(a) if the earlier filing is a regional international application, the name of the State or States for which it has been filed;

(b) if the earlier application is a national application, the Office with which it has been filed.

33. Where the priority of several earlier applications is claimed, the particulars of such earlier applications may be given in a single declaration.

34. If the formalities relating to the priority claim have not been satisfied in the prescribed manner and within the prescribed time limits, the claim to priority shall be deemed inadmissible.

Section VIII Disclosure for the Purposes of the State of the Art

35.—(1) An applicant who does not wish account to be taken, for the purposes of the state of the art, of a disclosure of the invention referred to in Article 5(2) and (3) of the Ordinance shall make a relevant statement in the application and shall supply in writing, either with the application or within a period of two months as from filing of the application, all the information relating to such disclosure.

(2) Where disclosure has been made at an officially recognized exhibition within the meaning of Article 5(2) of the Ordinance, the applicant shall supply within the above-mentioned two-month period a duly authenticated certificate issued by the authority responsible for the exhibition and containing information on that exhibition and stating that the invention has effectively been shown there.

Section IX Correction and Withdrawal of Application

36.—(1) If an applicant amends his application prior to issue of a patent or an inventor's certificate, his request for amendment shall be submitted in writing, duly signed by

the applicant himself or his agent or representative, and shall comprise the text of the amendments together with proof of payment of the prescribed fee given in Annex I.

(2) The amendments shall not go beyond the description of the invention as filed.

37.—(1) The application for a patent or inventor's certificate may be withdrawn at any time, prior to the date of issue, by means of a written declaration.

(2) The request shall be formulated by the applicant or by his agent or representative. In the latter cases, special powers of withdrawal shall be annexed to the declaration.

(3) If the application for a patent or inventor's certificate has been filed in the name of several legal or natural persons, it may only be withdrawn if requested by all such persons.

(4) If property rights, possessory liens or license rights have been entered in the national patent or inventor's certificate registers, the declaration shall be admissible only if accompanied by the written consent of the holders of such rights.

(5) In all cases of withdrawal of an application, a copy of such application shall be kept by the Office.

(6) The filing fee shall not be refunded in the event of withdrawal of an application.

Chapter II

Examination, Registration and Publication of Patent or Inventor's Certificate

Section I

Administrative Examination

38.—(1) The examination carried out by the Office in accordance with Article 24 of the Ordinance consists in checking that the provisions of Article 2(1) and of Articles 11, 12, 15, 16, 17, 18, 19, 21, 22, 26, 29, 32, 35 and 36 of this Decree have been complied with by the person or the persons filing an application.

(2) If one or more of those provisions have not been complied with, the Office shall invite the applicant to correct his application within the time limits laid down in Article 13(4) of this Decree and against payment of the fees laid down in Annex I.

(3) If the applicant does not comply with the invitation within the prescribed time limits, the application shall be declared inadmissible, subject to the provisions of Article 34 of this Decree.

Section II

State-of-the Art Search

39.—(1) In the case of international applications for patents or inventors' certificates filed under the Patent Cooperation Treaty of June 19, 1970 (hereinafter referred to as "the PCT"), the state-of-the-art search referred to in Article 25(1) of the Ordinance shall be supplied by the applicant and, under Article 52 of that Ordinance, shall be replaced by the international search report.

(2)(a) In the case of Malagasy applications for patents or inventors' certificates, the state of the art search report referred to in Article 25(1) of the Ordinance shall be supplied by the applicant.

(b) The search report shall:

- (i) either be replaced by an international-type search in accordance with Article 51 of the Ordinance;
- (ii) or be drawn up by an authority other than the Office;
- (iii) or be replaced by a search report drawn up in respect of an application for a patent or a certificate relating to the same invention.

Section III
Patentability Examination

40.—(1) In the case of international applications, the Office shall carry out a patentability examination in accordance with Article 25(1) to (3) of the Ordinance, subject to a preliminary international examination having been carried out under Article 33 of the PCT.

(2) For other applications, the patentability examination in accordance with Article 25(1) to (3) of the Ordinance shall be initially limited to checking the compliance of the application with the provisions of Articles 8 and 18 of that Ordinance.

Section IV
Issue and Registration of Patent or Inventor's Certificate

41.—(1) Where the application for a patent or an inventor's certificate satisfies the conditions laid down by the Ordinance and by this Decree, the Office shall register the patent and, subject to Article 26(2) of the Ordinance, the inventor's certificate.

(2) The Office shall notify in writing the decision to register the patent or inventor's certificate to its owner.

(3) The patent or inventor's certificate shall be signed by the Director General of the Office or by his representative.

42.—(1) The patent or inventor's certificate shall be drawn up in three copies.

(2) The original of the patent or inventor's certificate shall be handed to the owner, his successor in title, his agent or his representative.

43. A patent or inventor's certificate as issued and registered shall contain, in addition to the particulars and documents referred to in Articles 11 and 12 of this Decree, the following elements:

- (a) its definitive number;
- (b) the nature of the industrial property title issued;
- (c) the symbol or symbols of the international patent classification;
- (d) the date of issue.

Section V
Publication

44.—(1) In accordance with Article 26(4) of the Ordinance, the Office shall proceed, after issue and registration of the patent or inventor's certificate, with its publication in the Official Gazette of Industrial Property.

(2) The search report referred to in Article 39 of this Decree shall be kept, for public consultation, by the Office in the file on the relevant patent or inventor's certificate. On payment of the prescribed fee, any person may obtain a copy of that report.

45. Publication shall comprise the following particulars:

- (a) the number of the patent or inventor's certificate;
- (b) the full name and address of the owner;
- (c) the full name and address of the inventor unless he has waived, in writing, his right to be mentioned;
- (d) the filing date of the application;
- (e) where appropriate, the priority date and name of the country in which the earlier application was filed;
- (f) the date of issue of the patent or inventor's certificate;
- (g) the title of the invention;
- (h) the symbol or symbols of the International Patent Classification;
- (i) the abstract and, where appropriate, the most significant drawing.

Chapter III **Rights Deriving from Patent or Inventor's Certificate**

Section I *Inventor's Certificate*

46. In accordance with Article 28(2) of the Ordinance, the State may exercise, after issue and registration of an inventor's certificate, the rights under Article 27 of the Ordinance and work the invention, unless the State delegates its rights to a natural or legal person; in such case, it shall inform the owner of the inventor's certificate and also the Office thereof.

47. As from issue of an inventor's certificate, the owner shall receive from the State an award, whether the invention be effectively worked by the State or by a legal or natural person to whom it has delegated its rights.

48.—(1) The award given by the State to the owner of a granted inventor's certificate may consist, in particular, in one or more of the following advantages;

(a) commensurate monetary remuneration comprising a lump sum basic payment calculated according to the scientific or commercial value of the invention and a percentage depending on the results of working the invention;

(b) taxation advantages;

(c) grants for studies or for research;

(d) the possibility of working in the enterprise which, where appropriate, works the invention that is the subject matter of the inventor's certificate.

(2) The State may request the owner of an inventor's certificate to participate actively in the development of the invention.

49. The transfer of the rights of the owner of an inventor's certificate to the State and any decisions relating to awards shall be set down in writing and a copy of the contract shall be filed with the Office.

50. In accordance with Article 28(4) of the Ordinance, further regulatory texts shall supplement, where appropriate, the provisions set out in this Article.

Section II
Term of Patent and Inventor's Certificate

51. Pursuant to Article 10 of the Ordinance, the licensee of a patent or the owner of a patent or an inventor's certificate may, on expiry of a period of 15 years as from the filing date of the application, request the Office to extend the term of protection for five years.

52.—(1) The request for extension shall be submitted in writing using the form given in Annex II to the Office by the owner or, where appropriate, his agent or representative, during the two months preceding expiry of the patent or inventor's certificate.

(2) In accordance with Article 10 of the Ordinance, the request shall be duly evidenced and supported, in particular, by a report on the working of the patent or inventor's certificate in Madagascar.

(3) As from receipt of the request, the Office shall have a period of four months in order to give its decision.

(4) Extension of the term of a patent or an inventor's certificate shall be deemed to have been granted if no decision to the contrary is given. If on the expiry of the above-mentioned four-month period, no decision has been communicated to the owner, the patent or inventor's certificate shall be deemed automatically extended for five years.

53. The request for extension shall be accompanied by evidence of payment of the prescribed fee referred to in Annex I. The amount of the fee shall be refunded if the request for extension is refused.

54. If the term of a patent or inventor's certificate is extended, the Office shall enter in the Register and publish in the Official Gazette of Industrial Property the following particulars:

- (a) the registration number of the patent or inventor's certificate;
- (b) the title of the invention;
- (c) the registration date;
- (d) the filing date and the expiry date after extension;
- (e) the name and address of the owner;
- (f) where appropriate, the name and address of the agent.

Section III
Patent and Inventor's Certificate Renewal Fees

55. The amounts of the progressive annual fees are given in Annex I to this Decree.

56.—(1) Pursuant to Article 32(1) of the Ordinance, the annual fees shall be due as from the second year following the filing date of the application; fees shall be due on the anniversary date of the filing of the application.

(2) A six-month period of grace shall be afforded for the payment of annual fees on payment of a surcharge in accordance with Annex I to this Decree.

57.—(1) If the annual fee and the surcharge are not paid in accordance with Article 56, above, the patent or inventor's certificate shall automatically lapse.

(2) A certificate of addition relating to the patent or inventor's certificate shall also lapse as provided in the foregoing paragraph.

(3) In the case of an application for a patent or an inventor's certificate, failure to observe the provisions of Article 56, above, shall amount to a tacit declaration of relinquishment of the application.

Section IV *Restoration*

58.—(1) Pursuant to Article 33(1) of the Ordinance, a request for restoration of a right to carry out any act whatsoever with respect to any application for a patent or an inventor's certificate shall be submitted in writing to the Office within a period of two months as from the time the reasons of force majeure cease to apply.

(2) The request shall be reasoned and shall clearly and precisely state the reasons of force majeure that prevented compliance with a time limit set out in this Decree.

(3) The request shall be admissible only on payment of the restoration fee referred to in Annex I; such fee shall in no event be refundable.

(4) If the request is refused by the Office, an appeal to the competent court referred to in Article 33(3) of the Ordinance shall be filed within a period of one month as from receipt by the owner or his agent or representative of notification of refusal of the request.

Chapter IV **Assignment and Transfer of Patent Rights: Patent Licenses**

Section I *Assignment and Transfer of Rights*

59.—(1) The request for entry in the Register of Patents and Inventors' Certificates of an assignment or transfer, in part or in whole, of an application for a patent or of a patent shall be made in accordance with the form prescribed in Annex II and shall be addressed to the Office. It may be made by the former or by the new owner or by both.

(2) The request shall be accompanied by a copy of the authentic instrument of assignment or transfer bearing the legalized signatures of the parties to the contract. If that instrument is drawn up in a language other than Malagasy or French, it shall be accompanied by a translation into either of these two languages.

(3) Entry of an assignment or transfer in the Register of Patents and Inventors' Certificates shall be compulsory for the contract to be invocable against others.

(4) A request for entry shall only be admissible if it is accompanied by the prescribed fee given in Annex I.

(5) If the assignment or transfer is made in part only, the request for entry shall identify, by referring to the claims, that part of the patent which is assigned or transferred.

60.—(1) The validity and opposability of the contract for assignment or transfer of a patent shall be subject to prior examination of advisability by the Ministry responsible for industry.

(2) In case of a favorable decision, the Office shall inform the former and the new owner or, where appropriate, their agents or representatives and proceed with entry of the assignment or transfer in the Register and shall address to the former and the new owners or, where appropriate, their agents or representatives, a certificate of entry.

(3) If the decision is not favorable, the Office shall notify the owner of the decision of the Ministry responsible for industry, setting out the reasons that have led to the decision.

61. The former or the new owner or both may, within two months of receipt of the notification referred to in Article 60(3), above, file an appeal with the competent court.

Section II

Contractual Patent Licenses

62.—(1) A request for entry in the Register of Patents and Inventors' Certificates of a non-exclusive or exclusive license with respect to a patent application or a patent shall be made in accordance with the form laid down in Annex II and addressed to the Office. It may be made by the licensor or the licensee or by both.

(2) The request shall be accompanied by a copy of the licensing contract duly signed by the parties to the contract. If the licensing contract is drawn up in a language other than Malagasy or French, it shall be accompanied by a translation into one of these two languages.

(3) A licensing contract may only be invoked against others if it is entered in the Register of Patents.

(4) The request for entry shall be admissible only if accompanied by the prescribed fee given in Annex I.

(5) The Office shall proceed with entry of the contract and shall address a certificate to the licensor and the licensee or, where appropriate, to their agents or representatives.

63. The rules relating to the examination of advisability referred to in Articles 60 and 61 of this Decree shall apply where the licensor grants more than one non-exclusive license with respect to the same patent application or the same patent, in accordance with the conditions set out in Article 35(2) of the Ordinance.

Section III

Compulsory License and Ex-officio License

64. A request for the grant of a compulsory license to the competent court in accordance with Article 36 of the Ordinance shall be submitted in writing. It shall be duly signed by the person making the request.

65.—(1) The request shall also contain the following particulars:

(a) the number of the patent with respect to which the license is compulsory;

- (b) the particulars of the requester;
- (c) one or more of the reasons given in Article 36(1)(i), (ii) and (iii) of the Ordinance;
- (d) the plan according to which the requester proposes to work the patented invention together with, if the request is based on Article 36(1)(i) of the Ordinance, proof that he is capable of working the patented invention within the country;
- (e) name, address, nationality and domicile of the requester.

(2) The request shall only be admissible if accompanied by payment of the prescribed fee referred to in Annex I.

66. In assessing the reasons justifying the grant of a compulsory license, particularly that of effective and serious working, the competent court shall take into account, case by case, all the factual circumstances and, in particular, the nature of the invention, the size and capacity of the enterprise of the owner and of the requester as also of the needs of the market.

67. The competent court shall determine the time limits and conditions for hearing the owner of the patent and the person requesting a compulsory license.

68.—(1) The decision to grant or refuse a compulsory license shall be entered in the Register of Patents and Inventors' Certificates and shall be published in the Official Gazette of Industrial Property.

(2) The entry and publication shall comprise, in particular, the information referred to in Article 65(1) of this Decree.

69. Pursuant to Article 36(3) of the Ordinance, requests for entry of the transfer of a compulsory license shall contain details on the simultaneous transfer of the establishment of the holder of the license or of that part of the establishment in which the patented invention is worked.

70. Any court decision ordering withdrawal of a compulsory license shall be entered in the Register of Patents and Inventors' Certificates and published in the Official Gazette of Industrial Property. Entry and publication shall comprise, in particular, the information referred to in Article 65(1) of this Decree.

71. Any decision relating to an *ex-officio* license in accordance with Article 37(2) of the Ordinance authorizing working of the patented invention by the State or on its behalf shall be notified beforehand by the Ministry responsible for industry to the owner of the patent and to any holder of a license entered in the Register of Patents and Inventors' Certificates.

72. During a period of time to be laid down by the Ministry responsible for industry, the persons referred to in Article 71, above, may submit observations and contest the decision taken by the State, particularly with the respect to the amount of the proposed royalties.

73. Once the decision is final, it shall be entered in the Register of Patents and Inventors' Certificates and published in the Official Gazette of Industrial Property. The entry and publication shall comprise, in particular, the name of the natural or legal person who is to work the invention on behalf of the State.

Chapter V Special Provisions

Section I Certificates of Addition

74.—(1) The provisions of this Decree relating to patents for invention and inventors' certificates shall apply *mutatis mutandis* to applications for certificates of addition.

(2) An application for a certificate of addition may not relate to more than one application for a patent or inventor's certificate or to more than one patent or inventor's certificate.

75.—(1) An application for a certificate of addition shall be declared inadmissible if the applicant is not the owner, or one of the joint owners, entered in the Register of Patents and Inventors' Certificates of the invention to which the application for a certificate of addition relates unless, within two months of the date of receipt of the relevant notification addressed to the applicant, he has caused to be entered in the Register a document attesting to his capacity as owner or joint owner of the application for a patent or an inventor's certificate; however, the applicant for a certificate of addition may prove his capacity as owner or joint owner of the application for a patent or an inventor's certificate in any other way.

(2) Any application for a certificate of addition relating either to an application for a patent or an inventor's certificate that has been withdrawn or refused or to an application for a patent or an inventor's certificate or to a patent or an inventor's certificate that has lapsed shall be declared inadmissible.

76.—(1) If an application for a certificate of addition does not relate to at least one claim in the application for the main patent or for the main inventor's certificate, the Office shall invite the applicant to convert his application to an application for a patent or for an inventor's certificate.

(2) The application for a certificate of addition shall be refused if, within the prescribed time limit, the applicant does not request conversion to an application for a patent or for an inventor's certificate or does not submit written observations contesting the lack of relation.

(3) If the observations submitted by the applicant are not accepted, he shall be notified thereof. Where conversion is not requested within the new period of time afforded to him, the application for a certificate of addition shall be refused.

77. Any application for conversion of an application for a certificate of addition to an application for a patent or for an inventor's certificate shall be admissible only on condition that it is submitted in writing prior to the date of grant of the certificate of addition and if it is accompanied by proof of payment of the due fee referred to in Annex I.

78. The procedure for issuing a certificate of addition shall be terminated if, subsequent to its filing, the application for a certificate of addition proves to be related either to an application for a patent or for an inventor's certificate that has been withdrawn or refused or to an application for a patent or to a patent or to an application for an inventor's certificate or to an inventor's certificate that has lapsed.

Section II
International Applications

79. As from the entry into force of the Ordinance and of this Decree, and in application of Article 47(3) of the Ordinance, the tasks of the receiving Office as defined in Article 2 of the PCT shall be transferred to the International Bureau of the World Intellectual Property Organization (WIPO) until further order.

80.—(1) Notwithstanding the provisions in Articles 32 to 34 of this Decree, the person filing an international patent application that designates Madagascar may claim priority of a regular Malagasy filing of an earlier patent or inventor's certificate having the same subject matter.

(2) Regular filing shall mean any filing that is sufficient to establish the date on which the application has been filed in accordance with Article 13 of this Decree whatever the subsequent outcome of such application.

81. If, by reason of application of Article 80, above, two patents, one patent and one inventor's certificate or two inventors' certificates are granted by the Office with respect of the same invention, the patent or inventor's certificate resulting from the Malagasy filing shall have no effect to the extent that the latter is identical with the patent or inventor's certificate granted by the Office on the basis of the international application claiming the priority of such national filing in application of the conditions laid down in Article 4 of the Paris Convention.

82. Any person filing an international application that designates Madagascar shall be required, in accordance with Articles 22(1) and 39(1)(a) of the PCT, to supply a translation of the application in French and pay the filing fee.

Section III
Transitional Provisions on International Applications

83. Notwithstanding the general transitional provisions contained in Articles 142 to 146 of this Decree, where the time limits referred to in Articles 22(1) and 39(1)(a) of the PCT have expired with respect to an international application that designates Madagascar prior to the entry into force of the Ordinance and of this Decree, the applicant may comply with the conditions set out in Article 82, above, within a period of two years as from the aforementioned date of entry into force.

84. The two-year period referred to in Article 83, above, shall also apply where the time limits laid down in Articles 22(1) and 39(1)(a) of the PCT expire during the year following the date of entry into force of the Ordinance and of this Decree.

TITLE III
TRADEMARKS

Chapter I
Filing of Application

Section I
General Provisions

85.—(1) Pursuant to Article 60(1) of the Ordinance, applications for registrations shall be drawn up in five copies on A4-sized paper (21 cm x 29.7 cm) in accordance with the model form given in Annex II to this Decree.

(2) The copies shall be neither folded nor torn. Text on the copies shall be printed or typewritten in black and be sufficiently clear to permit offset reproduction.

86.—(1) Applications for registration shall contain the following particulars:

(a) the surname, forenames and nationality of the applicant;

(b) where appropriate, the business name of the applicant;

(c) the full address of the applicant;

(d) where appropriate, the name or business name and the address of the agent or representative;

(e) a list of goods or services grouped according to the classes of the classification referred to in Article 10 of this Decree together with a list of the corresponding classes;

(f) a reproduction of the mark in black and white or, where appropriate, in color, of the size prescribed by the annexed form;

(g) a statement of claim of a priority right;

(h) identification of the fees paid;

(i) a list of the annexed documents.

(2) Applications for registration shall be accompanied by the following documents:

(a) where appropriate, a declaration of priority established in accordance with the form prescribed in Annex II and the priority documents in accordance with the conditions and time limits laid down in Article 59 of the Ordinance;

(b) where appropriate, the powers of the agent or representative duly signed by the applicant;

(c) a printing block of the mark;

(d) proof of payment of the fees referred to in Annex I.

87. Where a mark is filed in color, the reproduction referred to in Article 86(1)(f), above, shall be accompanied by a claim to the color or colors and their arrangement.

88. Where the mark that is filed is a collective mark under Article 79 of the Ordinance, the application shall refer to the fact that it is such a mark and shall be accompanied by three

copies of the regulations governing the use of the mark in accordance with Article 79(1)(b) of the Ordinance.

89. Where the conditions set out in Article 61(3) of the Ordinance are complied with, the Office shall note on the copies of the application the date, time and place of filing, together with its serial number. One of the copies shall be returned to the applicant, accompanied by a receipt attesting to payment of the fees and bearing the authenticating stamp of the Office.

90.—(1) Where an application does not satisfy the conditions set out in Article 61(3) of the Ordinance, enabling the Office to determine a filing date for the application, and subject to the provisions laid down in Article 59 of the Ordinance, the Office shall invite the applicant in writing to regularize his application.

(2) The applicant shall enjoy a period of one month as from notification with respect to applications made on the national territory and of two months for applications from abroad in order to regularize his application.

(3) If the time limits referred to in paragraph (2), above, are met by the applicant, the filing date shall be the date on which the application is effectively regularized.

(4) If the applicant does not comply with the notification from the Office within the above-mentioned time limits, the application shall be declared inadmissible.

Section II *Priority Claim*

91.—(1) The declaration of priority shall include, in addition to the particulars referred to in Article 59(1)(i) of the Ordinance, the following information:

(a) where the earlier application is a regional or international application, the name of the State or States for which it has been filed;

(b) if the earlier application is a national application, the Office with which it has been filed.

(2) The list of goods or services of the earlier application or applications shall be in Malagasy or in French or accompanied by a translation into either of these two languages.

92. Where the priorities of more than one earlier application are claimed, the information relating to those earlier applications may be given in a single declaration.

93. If the formalities relating to the priority claim are not satisfied in the prescribed manner and time limits, the claim to priority shall be deemed inadmissible.

Section III *International Exhibitions*

94. Article 35(1) and (2) of this Decree shall apply *mutatis mutandis* to goods and services bearing a mark shown at an official international exhibition under the provisions of Article 59(3) of the Ordinance.

Chapter II **Examination, Registration and Publication of a Trademark**

Section I *Administrative Examination*

95. If the Office ascertains in the administrative examination that the filing fails to meet one of the conditions set out in Article 63(1) and (2) of the Ordinance, it shall invite the applicant to detail, supplement or correct his application within the time limits given in Article 90(2) of this Decree, subject to the provisions on claim of priority laid down in Article 59(1) of the Ordinance and on payment of the prescribed fee.

96.—(1) If the applicant does not comply with the invitation within the prescribed time limits, the application shall be deemed inadmissible, subject to the provisions of Article 93 of this Decree.

(2) If the details or the correction concern the list of goods and services, the Office may decide to effect that action if it is not liable to affect the scope of protection of the mark.

97.—(1) Until the time the mark is registered, the applicant may be authorized on request to correct any physical errors ascertained in the documents filed with the Office.

(2) If they are not corrected within the time limits referred to in Article 90(2) of this Decree, the mark shall be registered as it stands.

Section II *Substantive Examination*

98. Applications for registration of marks may be subjected, under Article 64(1) of the Ordinance, to a substantive examination.

Section III *Registration and Publication*

99.—(1) The provisions of Article 37 of this Decree shall apply *mutatis mutandis* to trademarks.

(2) Withdrawal of an application for registration may be limited to a part only of the goods and services listed in the application.

100.—(1) Where the application meets the conditions laid down by the Ordinance and by this Decree, the Office shall register the mark in the Register of Trademarks and publish it in the Official Gazette of Industrial Property.

(2) The Office shall issue a registration certificate in three copies which shall bear the registration number, the date, the signature of the Director General of the Office or of his authorized representative, together with the stamp of the Office.

(3) One copy of the certificate shall be addressed to the applicant or his agent or representative.

101. In accordance with Article 64(3) of the Ordinance, the applicant may file an appeal to the competent court within a period of two months as from notification of refusal to register the mark.

102.—(1) The following information shall be entered in the Register of Trademarks:

- (a) the registration number of the mark;
- (b) the date, time and number of the application for registration;
- (c) the expiry date for the registration;
- (d) where appropriate, information on a claim to priority;
- (e) where appropriate, a statement that the mark is a collective mark;
- (f) the information to identify the owner and, where appropriate, his agent or representative;
- (g) a representation of the mark in black and white or, where appropriate, in color;
- (h) a list of goods and services for which the mark has been registered together with a statement of the corresponding class or classes;
- (i) where appropriate, a statement of the colors claimed and their arrangement.

(2) The following shall also be entered in the Register of Trademarks in accordance with the provisions of the Ordinance and of this Decree:

- (a) any amendments concerning the mark or its owner;
- (b) trademark licenses;
- (c) amendments to the regulations for using a collective mark;
- (d) renewals of the mark;
- (e) information on voluntary withdrawal or relinquishment or on withdrawal or cancellation as a result of a court decision.

103.—(1) The publication in the Official Gazette of Industrial Property shall comprise the information referred to in Article 102(1) of this Decree.

(2) The entries required by Article 102(2) of this Decree shall also be mentioned in the Official Gazette of Industrial Property.

(3) A registered mark may be consulted free of cost and a copy may be issued on payment of the fee laid down in Annex I.

104. The words “Registered Trademark” or the letter “R” in capitals within a small circle may only be used as from the filing date of the mark concerned.

Chapter III **Rights Afforded by Registration of Trademark**

Section I *Renewal of Registration*

105.—(1) In accordance with Article 69(2) of the Ordinance, the request for renewal of registration drawn up in accordance with the form prescribed in Annex II shall contain the following information:

- (a) the surname, forenames and address of the owner;
- (b) the registration number and expiry date of the mark;

(c) where appropriate, a list goods and services less extensive than that of the original registration;

(d) identification of the fee paid;

(e) signature of the owner or, where appropriate, of his agent or representative.

(2) The request shall be accompanied by:

(a) proof of payment of the prescribed fee;

(b) where appropriate, the powers of the agent or representative, signed by the owner;

(c) a list of the documents transmitted.

106.—(1) If the request for renewal complies with the time limits and conditions laid down by Article 69(2) of the Ordinance and the conditions laid down by Article 105 of this Decree, the Office shall renew the registration and address to the owner a renewal certificate that shall comprise, in particular, the renewal date, the new expiry date and, where appropriate, the new list of goods or services.

(2) The new 10-year period shall begin as from the renewal date.

(3) The particulars given in the certificate, together with a representation of the mark, shall be entered in the Register of Trademarks and published in the Official Gazette of Industrial Property.

Section II

Loss and Restoration of Rights

107. Notwithstanding Article 70(1) of the Ordinance, a registered trademark shall not be deemed to have fallen into the public domain except on a court decision.

108. Article 58 of this Decree shall apply *mutatis mutandis* to trademarks.

Section III

Transfer of Trademark and Licensing

109. Articles 59, 60 and 61 of this Decree shall apply *mutatis mutandis* to trademarks.

110. Article 62 of this Decree shall apply *mutatis mutandis* to trademarks.

Chapter IV

Special Provisions on Collective Marks

111. Subject to the special provisions contained in the Ordinance and in this Chapter, the provisions of this Decree with respect to trademarks shall apply to collective marks.

112. Any change in the use of a collective mark shall be stated in the regulations for use of the mark; such change shall be notified to the Office which shall enter it in the Register of Trademarks and publish it in the Official Gazette of Industrial Property.

113. The authority competent under Article 71(5) of the Ordinance to examine the advisability of a trademark assignment contract, may carry out a more severe verification in the case of a contract for assigning or transferring a collective mark.

114. The Office may decide in certain cases that, where a registered collective mark that was used to a considerable extent is withdrawn or cancelled, no registration shall be

granted for an identical mark concerning the same goods or services during a period of five years as from such withdrawal or cancellation.

TITLE IV INDUSTRIAL DESIGNS

Chapter I Filing of Application

Section I General Provisions

115. Pursuant to Article 97(1) of the Ordinance, applications for registration shall be drawn up in five copies on A4-sized paper (21 cm x 29.7 cm) in accordance with the model form given in Annex II to this Decree.

116. An application for registration shall contain the following information:

(a) the surname, forenames and address of the applicant and, where appropriate, those of his agent or representative;

(b) where appropriate, the surname, forenames and address of the creator;

(c) the nature of the deposited article together with the corresponding class or classes of the International Classification for Industrial Designs;

(d) where appropriate, any claims to priority;

(e) identification of the fees paid;

(f) a duly completed list of the documents transmitted;

(g) the applicant's signature.

117.—(1) The application shall be accompanied by:

(a) an explanatory description of the industrial design filed in three copies;

(b) a representation, in the form of a drawing or photograph, in black and white or in color of the article filed in five copies;

(c) proof of payment of the fees.

(2) The application may, where appropriate, be accompanied by:

(a) a specimen in colors, in relief or in three dimensions of the industrial design, in two identical copies;

(b) special powers signed by the applicant;

(c) a priority declaration drawn up in accordance with the form prescribed in Annex II, together with the priority documents in accordance with the conditions and time limits laid down in Article 93 of the Ordinance.

118.—(1) The drawings or photographs referred to in Article 117(1)(b) of this Decree shall not be folded and shall be addressed to the Office in an envelope.

(2) The size of the drawings or photographs may not be less than 8 cm long by 8 cm wide.

(3) The applicant shall write his signature on the back of each copy of the drawing or photograph.

(4) The interior of the envelope shall contain all of the information required to identify the applicant and the industrial design. The envelope shall not be larger than 30 cms.

119.—(1) If the applicant accompanies his application with two specimens of the industrial design in accordance with Article 97(2) of the Ordinance, such specimens shall be contained in a box of metal, wood or plastics.

(2) The outside dimensions of the box shall not be more than 50 cm long, 50 cm wide and 25 cm high. The overall weight of the box, including its contents, shall not exceed 8 kg.

(3) The applicant shall write his surname, forenames and address and the nature of the article deposited on one of the surfaces of the box. He shall write his signature thereon.

(4) The Office shall write on the box the date, time and number of the deposit and shall affix its mark and its seal.

(5) The box shall be encircled with string or wire crossed on the base and on the cover and held by at least two seals. The seals shall be affixed on the knot, one by the applicant and the other by the Office.

(6) The cover of the box shall be fitted in such a manner that the box can be opened by the Office without it being damaged.

120. On receipt of the documents and articles referred to in Articles 116 to 119 of this Decree, the Office shall allocate a date and deposit number and shall inform the applicant thereof.

Section II

Priority Claim

121.—(1) The declaration of priority shall give, in addition to the particulars required by Article 98(1)(i) of the Ordinance, the following information:

(a) if the earlier application is a regional or international application, the name of the State or States for which it has been filed;

(b) if the earlier application is a national application, the Office with which it has been filed.

(2) Articles 92 and 93 of this Decree shall apply *mutatis mutandis* to industrial designs.

Section III

International Exhibitions

122. Article 35(1) and (2) of this Decree shall apply *mutatis mutandis* to industrial designs.

Chapter II Examination and Registration

123.—(1) In accordance with Article 99(1) of the Ordinance, the Office shall examine whether the conditions set out in Articles 115 to 119 of this Decree have been met.

(2) If such is the case, the Office shall register the industrial design and shall inform the applicant thereof. It shall make the entry in the Register of Industrial Designs and publish it in the Official Gazette of Industrial Property.

(3) The fee referred to in Article 101 of the Ordinance is given in Annex I.

(4) The registered designs may be consulted free of charge and a copy may be issued on payment of the fee given in Annex I.

124. Articles 102 and 103 of this Decree, concerning entry in the Register of Trademarks and publication, shall apply *mutatis mutandis* to industrial designs.

125. Articles 95, 96(1) and 97 of this Decree shall apply *mutatis mutandis* to industrial designs for application of Article 99(2) of the Ordinance.

126. Pursuant to Article 100(2) of the Ordinance, the applicant may lodge an appeal with the competent court within a period of two months as from notification of refusal to register an industrial design.

Chapter III Rights Afforded by Registration

Section I Renewal of Registration

127.—(1) Pursuant to Article 107 of the Ordinance, a request for renewal of an industrial design registration for each five-year period shall be drawn up on the form prescribed in Annex II. It shall contain the following information:

(a) the surname, forenames and address of the owner and, where appropriate, those of his agent or representative;

(b) the registration number and date of the industrial design;

(c) the expiry date of the registration;

(d) identification of the fee paid;

(e) signature of the owner or, where appropriate, of his agent or representative.

(2) The request shall be accompanied by:

(a) proof of payment of the prescribed fee;

(b) where appropriate, the powers of the agent or representative, signed by the owner;

(c) a list of the documents transmitted.

128.—(1) If the request for renewal complies with the time limits and conditions laid down by Article 107(2) and (3) of the Ordinance and the conditions laid down by Article 127 of this Decree, the Office shall renew the registration for five years and shall address to the owner a renewal certificate containing, in particular, the renewal date and the new expiry date.

(2) The five-year period shall run as from the renewal date.

(3) The particulars shown on the certificate shall be entered in the Register of Industrial Designs and published in the Official Gazette of Industrial Property.

Section II
Restoration of Rights

129. Article 58 of this Decree shall apply *mutatis mutandis* to industrial designs.

Section III
Transfer and Licensing

130. Articles 59, 60, 61 and 62 of this Decree shall apply *mutatis mutandis* to industrial designs.

TITLE V
TRADE NAMES

Chapter I
Filing of Application

131. Pursuant to Article 121(1) of the Ordinance, applications for registration of a trade name shall be drawn up in four copies on A4-sized paper (21 cm x 29.7 cm) in accordance with the model given in Annex II.

132.—(1) The application shall contain the following information:

(a) the surname, forenames and address of the applicant or, where appropriate, those of his agent or representative;

(b) the trade name, business designation or business name that is the subject matter of the application;

(c) in the case of a trade name, the application should contain the surname, forenames and full address, together with the nationality, of the natural person. In the case of a business designation, the name and registered offices of the legal person. In the case of a business name, the surnames and forenames of the associates;

(d) the business purposes of the enterprise;

(e) where appropriate, a label showing the trade name as used;

(f) identification of the fees paid;

(g) a list duly completed of the documents transmitted;

(h) the applicant's signature.

(2) The application shall be accompanied by:

(a) proof of payment of the prescribed fees;

(b) where appropriate, the powers of the agent or representative, signed by the applicant.

133.—(1) The application should also be accompanied, where appropriate, by a declaration by which the applicant states that the trade name applied for is also used as a sign.

(2) The declaration referred to in paragraph (1), above, shall specify whether the trade name has been registered as a trademark on the national territory. In such case, it shall give the registration date and number of the trademark.

134. If the Office ascertains that the application filed with it or with the court registrar of the place of the applicant's main business, in accordance with Article 122 of the Ordinance, meets the conditions set out in Articles 131 and 132 of this Decree, it shall give a filing number and, as filing date, the date of receipt of the particulars and documents mentioned above.

135. If the application does not meet the conditions laid down in Articles 131 and 132, above, Article 90 of this Decree shall apply *mutatis mutandis* to trade names.

Chapter II Examination and Registration

136. Pursuant to Article 123 of the Ordinance, a clerical error may be corrected on payment of the fee prescribed in Annex I.

137.—(1) The registered trade name shall be entered in the Register of Trade Names and published in the Official Gazette of Industrial Property.

(2) The entry in the Register and the publication shall contain the particulars referred to in Article 132(1) of this Decree as also the registration number and the expiry date.

(3) Any decision of withdrawal, relinquishment or cancellation concerning the registered trade name shall also be entered and published.

Chapter III Renewal of Trade Names

138.—(1) Pursuant to Article 125 of the Ordinance, requests for renewal of registrations of trade names for a period of 10 years shall be drawn up in accordance with the form prescribed in Annex II. It shall contain the following information:

(a) the surname, forenames and address of the owner and, where appropriate, of his agent or representative;

(b) the trade name and the registration number;

(c) the filing and registration date and the expiry date;

(d) where appropriate, the objects of the company if different from those given at the time of the earlier registration;

(e) identification of the fees paid;

(f) the applicant's signature.

(2) The request for renewal shall be accompanied by proof of the fees paid and, where appropriate, the powers of the agent or representative duly signed by the owner.

139. If the request for renewal of a trade name meets the conditions and time limits laid down in Article 125 of the Ordinance and Article 138 of this Decree, Article 106 of this Decree shall apply *mutatis mutandis* to trade names.

Chapter IV Assignment and Transfer of Trade Names

140. Subject to the principle laid down in Article 128(1) of the Ordinance, the rules laid down in Article 59 of this Decree shall apply *mutatis mutandis* to trade names.

Chapter V Special Provisions

141. The provisions of this Decree relating to the registration of trade names shall not replace the commercial law provisions relating, in particular, to the obligation to register any new firm constituted on the national territory.

TITLE VI TRANSITIONAL AND FINAL PROVISIONS

Chapter I Transitional Provisions

142.—(1) Article 133 of the Ordinance shall apply as follows:

(a) the declaration of maintenance in force of patents, trademarks and industrial designs referred to in Article 133(3)(i) shall be submitted in three copies to the Office using the form prescribed in Annex II;

(b) the declaration shall be accompanied by the original of the filing report and of the notification of registration of the industrial property title, together with any relevant amendments (where appropriate, by special powers signed by the owner) and proof of payment of the fee prescribed in Annex I.

(2) Article 133 of the Ordinance shall not apply to international applications filed under the PCT that are governed by the Ordinance and this Decree as of their entry into force subject to the provisions laid down in Articles 83 and 84 of this Decree.

143. If the declaration meets the conditions laid down in Article 142, above, the Office shall register the declaration, publish a notice in the Official Gazette of Industrial Property and return to the requester a copy of the declaration bearing the approval of the maintenance in force of the industrial property title.

144. In the event of irregularity or defect or insufficient payment of the prescribed fee, a period of two months shall be given the requester in order to regularize his situation. That period may be extended on a reasoned request. Failing regularization, the declaration shall be deemed inadmissible.

145.—(1) Pursuant to Article 133(5) of the Ordinance and subject to the declaration of maintenance in force having been accepted by the Office, the patents and industrial designs referred to in Article 133(1) and (2) of the Ordinance shall be governed by the provisions of that Ordinance as from its entry into force.

(2) However, with regard to the term of patents and industrial designs referred to in paragraph (1), above, the provisions of Annexes I and III to the Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property, of September 13, 1962, shall remain of application.

(3) Pursuant to paragraph (2), above, protection shall lapse:

(a) for patents, 20 years after their filing date; any certificates of addition shall lapse together with the main patent;

(b) for industrial designs, 20 years after their filing date, even if the owner has not requested maintenance of protection following the first five-year period in accordance with the provisions of Article 8 of Annex III referred to in paragraph (2), above.

146.—(1) Pursuant to Article 133(5) of the Ordinance and subject to the declaration of maintenance in force having been accepted by the Office, the trademarks referred to in Article 133(1) and (2) of the Ordinance shall be governed by the provisions of that Ordinance as from its entry into force.

(2) The provisions of paragraph (1), above, shall also apply to the term of protection for trademarks subject to the owner of the registration submitting with the declaration of maintenance in force, within the time limits laid down in Article 133(3) of the Ordinance, an additional declaration in which he confirms his intention to maintain the registration of his trademark or trademarks. The declaration shall be made in accordance with the form prescribed in Annex II.

(3) The date of acceptance shall be entered on a copy of the declaration of confirmation of the trademark registration which shall be entered in the Register of Trademarks and published in the Official Gazette of Industrial Property. The term of validity of a trademark shall be 10 years as from the aforementioned date of acceptance. The owner of the mark may, where appropriate, claim earlier rights if the declaration of maintenance in force referred to in paragraph (1), above, has been filed and accepted.

(4) The declaration of confirmation of registration of a mark shall be subject to payment of the fee prescribed in Annex I.

(5) If the declaration of confirmation is not filed within the prescribed time limits and the fee is not paid, the registration shall be deemed relinquished and a notice thereof shall be made in the Register of Trademarks and in the Official Gazette of Industrial Property.

Chapter II

Final Provisions

147.—(1) Pursuant to Article 136 of the Ordinance, any transmission of a document by modern telecommunication means such as telex or telefax shall be confirmed by sending an original document within the month following the date of transmission by such means.

(2) Failure to comply with the time limit referred to in paragraph (1), above, shall mean that the transmission by modern telecommunication means shall be deemed never to have taken place.

148. Ordinance No. 89-019 of July 31, 1989, shall enter into force as of the date of publication of this Decree.

149. The Minister for Industry and Crafts, the Minister for Finance and the Minister for the Budget and the Plan shall be responsible, each where he is concerned, for the execution of this Decree which shall be published in the Official Gazette of the Republic.

* *Official French title:* Décret n° 92-993 portant application de l'ordonnance n° 89-019 du 31 juillet 1989 instituant un régime pour la protection de la propriété industrielle à Madagascar.

Entry into force (of the last amending Decree): March 13, 1995.

Source: *Journal officiel de la République de Madagascar*, No. 2218 of December 9, 1993, and No. 2291 of March 13, 1995.

Note: Translation by the International Bureau of WIPO.

** Added by the International Bureau of WIPO.

¹ Not reproduced here (*Editor's note*).

² Not reproduced here (*Editor's note*).