

## **CHAPTER VI: INDUSTRIAL PROPERTY**

### **1. Concept**

Industrial Property refers to a grant of an exclusive right, made by the government of a country to a specific person for exploiting an industry which is the subject of said right, for a specific number of years (renewable); it is also the right to the exclusive use of a mark, signal or title which designates the origin of manufactured and commercial articles.

In the Republic of Panama Industrial Property Rights may be granted to nationals as well as to foreigners. Concession of these rights is always carried out without damaging third parties; they are indivisible from the purpose, procedure, product or result that caused them, except for any voluntary assignment by the grantee or the concessionaire. Concessions are transferable according to law, but transfers shall not become effective with respect to third parties until properly recorded before the General Office of Industrial Property Registry of the Ministry of Commerce and Industries (also known as DIGERPI).

The right of use of Industrial Property includes the registration of a patent of invention, of introduction and certificates of addition, registration of trade marks, marks of commerce, of utility models and industrial or artistic design models, registration of trade names and of any sign or label for the establishment, plus the signals or expressions utilized in advertising.

### **2. Legal Framework**

In Panama, industrial property is regulated by Law No.35 of 1996, which purpose is to protect inventions, useful models, industrial models and designs, industrial and trade secrets, products and services marks, collective and guarantee marks, origin indications, origin denominations, commercial names and advertising signals and expressions. This law was implemented by means of Executive Decree No. 7 of February 17<sup>th</sup>, 1998. This law was a result of recent changes introduced internationally and aimed to modernize international commercial operations and meet requirements of the World Commerce Organization.

Law 29 of February 1<sup>st</sup>, 1996 “by means of which several statutory provisions were enacted to prevent unfair competition”, was part of this updating process. Furthermore, it establishes the jurisdictional and competent authorities by creating the special Courts of Justice that will deal, among other things, with Industrial Property controversies, besides copyrights and Neighboring Rights.

Panama subscribed the Inter-American General Convention on Trade and Marks Protection and the Protocol on the Inter-American Registry of Fabric Marks signed in Washington on February 2<sup>nd</sup>, 1929, the Paris Convention on Industrial Property Protection, of March 20<sup>th</sup>, 1883, and the Marrakech Agreement of the World Trade Organization, approved, respectively, by Law 64 of December 28<sup>th</sup>, 1934, Law No.41 of July 13<sup>th</sup>, 1995 and Law 23 of July 15<sup>th</sup> of 1997.

These matters are also regulated by Executive Decree No. 123 of November 26<sup>th</sup> 1996 regulating Articles 176 and 1977 of Law No. 35 (custom rules against Counterfeiting), and Executive Decree No.79 of August 1<sup>st</sup>. 1997 regulating articles 176 and 177 of Law No. 35 (custom rules against Counterfeiting), in relation to the Colon Free Zone and other Free Zones or Processing Zones administered by the State.

Registration of patents of inventions, useful models, industrial models and designs, products and services marks, collective and guarantee marks, as well as origin indications, origin denominations, commercial names and advertising signals and expressions shall be processed by DIGERPI.

### **3. Trade Marks**

#### **a) Doctrine Concept**

“Mark” is any sign, word, combination of those elements or any other medium used to distinguish products or services of any person in the market, from any similar product or service owned by another person. This definition may vary according to juridical systems of each country.

However, and regardless of the definition adopted, the mark shall contain the following essentials:

- The mark shall be original, innovating and lawful.
- The mark is an immaterial good that must be incorporated to a “corpus mechanism” or material element in order to be perceived by the human senses.
- The mark must be distinctive if it is to serve the purpose of identifying the origin of goods and, thereby, avoid confusion, deception or mistake.
- The mark emerges from linking a sign to a specific product or service, but such link is not truly realized unless a real and effective use of the mark in the normal course of business, before the public. For that reason, the mark must be used effectively for commercial purposes.

#### **b) Legal Concept**

Law 35 of 1996 eliminated the distinction between “national” and “foreign” trademarks and recognizes the right of the owner of a trademark abroad to claim priority for registration purposes in Panama.

Panama’s trademark law states that the right to register a trademark is derived from its use and the right to have the exclusive use of a trademark is protected by its registration.

It is possible to oppose an application for registration of an identical or similar trademark without a previous registration, by submitting evidence of prior use.

Regarding determination per class of products and services, Panama adopted the so-called Nice International Classification by means of Decree No. 107 of August 12<sup>th</sup> 1981. Furthermore, authorization for the use of the term “Panama” for registration of mark is regulated by means of Executive Decree No. 96 of October 18<sup>th</sup> 1999.

#### **c) Registration of a Trademark**

Any Panamanian or foreigner may register a trademark or a trade name in the Republic of Panama, by applying for and complying with the formalities of registration. For such purpose, an application form is provided by DIGERPI. Such application must be filed by a Panamanian lawyer or law firm. This application should contain the following information:

- i) The name, nationality, legal domicile, and place of residence of the mark’s owner, Identity Card number, or Passport number of the applicant. If the applicant is a juridical person (corporation), the application shall include the name of the corporation, place of incorporation and specific legal domicile.

- ii) Denomination and/or design of the mark under the same form it will be used in the market.
- iii) An exact description of the class and nature of the articles or products under which the trademark, mark or trade name ought to be used.
- iv) The date on which the trademark, mark or trade name shall be put into use.

The application for registration shall be accompanied by the following documentation:

- Power of Attorney. In the case of companies, a good standing certificate or similar documentation, issued by the competent authority of the constitution country, certifying the registration, the existence of the company, the name of the Legal Representative who grants the Power of Attorney on behalf of the company and a declaration stating that such individual has the authority to execute the Power of Attorney. Said certification shall be valid for one (1) year as of the issuance date.
- Affidavit stating : (a)that the applicant is the owner of the mark, (b) that no other person, juridical or natural, has the right to use the said mark; (c) that the mark is used, or will be used, by the applicant in the national or the international trade markets, and (d) that the description of the mark and the design referred to in the affidavit distinctly represent the mark as it shall be registered and protected.
- Six samples (labels) of the trademark to be registered.
- Claim of priority rights, if any, in which case it shall be demonstrated at the time of filing the application or within the six (6) months period following the application filing in Panama. Demonstration depends upon the copy of the application in the corresponding Office of the Industrial Property, accompanied by the said receipt.
- Voucher or receipt evidencing the payment for the Registration Rights, recording and publication of the mark.

All documents issued abroad shall be translated into Spanish and legalized by a Panamanian Consul or stamped with an “Apostil”, as established by the 1961 Hague Convention.

As Panama has adopted the Nice Classification, now it is necessary to file as many separate applications as classes for which it is desired to secure protection for a mark.

#### **d) Publication / Opposition**

After all formalities have been complied with, the application is published in the Industrial Property Bulletin. At this stage of the procedure, any third party who considers that it has the right to oppose an application, may do so by instituting the corresponding proceedings within the two months following the date of publication.

Opposition may be based on the following:

- Identical, similar or alike trademark that is already known and used, registered, or in the process of being registered, to cover products or services which are in the same class, thus with a high probability of causing confusion among consumers;
- A trademark consisting, jointly, in descriptive indications of the nature, characteristics, use or application, species, quality, quantity, destination, value, of manufacturing or origin place, or of the time of the production, of the product

or the presentation of the service in question, and those constituting the usual or generic denomination of the product or service, except for those that have become distinctive or singular as a result of their use.

- Identical or similar trademark to one that is famous, renowned, notorious or known to cover products or services of any nature;
- A trademark that is a translation into Spanish of a word used, known, registered or in the process of registration to cover products or services of any nature;
- A trademark that represents a total or partial reproduction, imitation, translation into Spanish or transcription of a commercial or corporate name of an individual or company known in Panama or abroad and which may cause confusion among consumers with respect thereto.
- A trademark that consists of the title of a book, play, music composition or scientific work, and names of a fictional or a human character without the proper written consent of its author.

#### **e) Duration / Renewal**

The registration of a trademark is valid for ten (10) years, counted from the day the corresponding application was presented, and it may be renewed indefinitely for equivalent terms, as long as the application for renewal has been presented within the permitted period. Applications for renewal shall be filed between the one (1) year precedent and the six (6) months subsequent to the date of expiration of the respective registration. If the application for renovation is presented within the six (6) months following the expiration of the registration, the interested applicant shall have to pay the overcharge corresponding to the relate penalty.

Application for renewal of a mark shall not include any changes in said mark, nor shall it be permitted to the applicant to increase the list of products or services for which the mark was registered. However, the owner of the mark may limit such a list if he so desires. In order to introduce any changes or increase the number of products or services protected under said registration, the applicant shall submit a new application.

#### **f) Use**

The use of a trademark is defined as “the production, manufacture, processing, or preparation of articles, or goods protected under such a trademark and the placing thereof in domestic or international trade”.

The person (natural or juridical) that first makes use of a trademark or name is the one who has the preferential right to register said mark.

#### **g) Trading in Trademarks**

Panama’s trademark legislation provides for the assignment of trademarks. This is not subject to special formalities and will be ruled according to civil law. It only requires that the assignment be registered in DIGERPI in order for it to be effective against third parties.

The assignment of a trademark carries the right of exploitation of the products protected by it.

### **4. Commercial Names**

Panamanian law protects the exclusive use of the commercial denomination or name of a mercantile or industrial firm.

A commercial denomination may be registered by any natural or juridical person engaged in commerce or industry.

The person who first makes use of a commercial name has the right to register it. However, our law allows the registration of a commercial name before it has been used, provided that the proper documentation has been duly presented with the application, except for the photocopy of the commercial license of the applicant or the corresponding provisional license (or in case of a foreign company, a certification from competent authority of its respective country, attesting that the applicant dedicates itself to the commerce or industry, using the commercial name being applied for), which must be presented within one (1) year from the date of application. The non-presentation of the commercial license within the one (1) year period will cause the application to elapse.

## **5. Collective and Guarantee Marks**

**Collective marks** are those exclusively applied for by the various associations of producers, manufacturers, merchants or service providers, or any other non-for-profit associations. These types of marks are used with the purpose of separate the products and services offered by the members of those associations from non-member's products and services.

Application for registration of a collective mark shall include the following :

1. Regulations on the use.
2. Identification data of the applicant association.
3. Name of the persons authorized to use the mark.
4. Affiliation conditions of the said association.
5. Conditions for the use of the mark.
6. Possible causes for prohibition of the use by a member of the said association.

In case of infringement of the said regulation, the owner of the mark may prohibit the use of the mark or apply any of the penalizations prescribed by the regulations in force.

On the other hand, a **guarantee mark** is a sign or the means that certifies the common characteristic and, in particular, the quality, the elements and the origin of the products manufactured or distributed, or of the services provided by the persons duly authorized by the owner of the mark for its use.

Application for registration of a collective mark shall include a set of regulations on the use with the following elements :

1. The quality, the components, the origin or any other characteristic of the corresponding products or services.
2. The control measures the holder of a guarantee mark is committed to enforce.
3. Applicable penalizations.

In the event of infringement of regulations, the markholder may revoke the authorization for the use of the mark or apply any penalization contemplated in the regulations on the use.

On the other hand, the guarantee mark is a signal or the medium which certifies the

common characteristics, and in particular, the quality, the elements and the origin of the products being made or distributed, or the services being rendered by people who have been duly authorized by the owner of the mark to use it.

## **6. License for the Use of a Mark and Franchise**

This novelty of our legislation is the right that any owner of a registered mark has to subscribe a contract that will grant another person the **license to use** the owner's mark in relation to all or part of the products or services protected under the registered mark. The advantage is that the use of the mark by the licensee shall be assimilable (to the use) that may have been made by the holder, even if the latter has the power to exert, simultaneously, reserve rights.

Furthermore, the owner has the option to provide, with the license for the use, knowledge or technical assistance for the marketing of the product or the service covered by the mark in a uniform way. Granting of a **Franchise** may have the purpose of maintaining the quality, the prestige and the image of the product or the service identified by the mark.

## **7. Advertising Expression or Signal**

It refers to all ad, legend, slogan, phrase, combination of word, design, engraving or any other similar means, provided to be original, distinct and used to attract consumers or users attention over a specific product, merchandise, service, enterprise or establishment.

Registry or an advertising expression or sign shall have duration of ten (10) years, as of the application filing date, and may be renewed for ten (10) years periods indefinitely.

The protection provided is concerned with the whole and not with parts or elements considered separately.

The use of a mark within the expression requires the express authorization of the holder of the mark.

Advertising expression is subject to the same rules as the marks concerning registration, cancellation and nullity.

## **8. Patents**

### **a) Legal Framework**

In Panama, Invention Patents are governed by Title II of Law 35 of May 10<sup>th</sup>, 1996, regulated by Executive Decree No.7 of February 17, 1998. Internationally, the Republic of Panama has ratified the Paris Convention by means of Law 41 of July 13<sup>th</sup>, 1995.

### **b) Definition of Invention**

Any idea applicable in practice to the solution of a given technical problem is an invention.

There are two types of inventions, to wit :

- Invention of a product: Include substance, composition, material, article, device, machine, etc.
- Invention of a process: Include, among others, any method, system or sequence of phases leading to the manufacturing or the obtainment of a product or result, as well as the use or the application of a process or of a product for the obtainment of a given result.

On the contrary, the following are not considered inventions for the purposes of the Law :

1. Theoretical or scientific principles.
2. Discoveries concerning Nature.
3. Plans, schemes, principles or methods of Business or Economics, of purely mental activities and the games.
4. The computation programs per se referred to the designated use for a computer (issues covered by Copyrights).
5. Information presentation forms (might be covered by Copyrights)
6. Aesthetics creations and artistic or literary works (issued covered by Copyrights).
7. Methods for surgical, therapeutic and diagnosis treatment of the human body and those related to animals. This rule shall not apply to products, especially to substances or compounds, nor to the invention of devices or instruments intended to put into practice the said methods. For example, an “oral method” to take a drug can not be patented.
8. Juxtaposition of known inventions, or mix of known products, the variation in their form, dimensions or materials, except when actually combined or merged in a way that prevent their separated functioning, or when their characteristic functions or qualities are modified to obtain an industrial result not obvious for an expert in the field.
9. Inventions contrary to the national laws, the health, the public order, morals, the mores or the national security (similar to marks provision).

### **c) Patentability**

For an invention to be patentable three requirements shall be fulfill, to wit :

#### **i) Novelty.**

A patent is a novelty when said patent has not been disclosed to third parties anywhere under any of the following forms : Tangible publication, orally, selling or marketing, use, any other means.

Such disclosure shall not occur either before the date of filing of the application in Panama or before the date of the priority recognized when the patent was claimed in accordance with the law.

At the time of ascertainment of the patentability, any other patent application in progress in Panama shall be taken into account whether filed before or with a previous priority with respect to the application currently examined.

#### **ii) That the invention resulted from an inventive activity.**

This is when the invention is not obvious nor evidently derived from the state of the art for a person normally acquainted with the corresponding field.

#### **iii) That the invention has industrial application.**

This is the situation when the invention may be produced or used in any type of industry or activity, whether crafts, agriculture, mining, fishing and services, in other words, that the invention satisfies a need.

The following inventions concerning living are not patentable :

1. Cases essentially biological, for the obtainment or reproduction of plants, animals or varieties thereof, provided that DIGERPI deemed them harmful for morals, integrity or dignity of the human being.
2. Plants varieties as well as the animal species and breeds.
3. Biological material as found in Nature.
4. Those referring to living elements of the human body.
5. Plants varieties. Nevertheless, they are protected and may be registered at DIGERPI due to Law 23 of July 15<sup>th</sup> 1997, Decree No. 13 of March 19<sup>th</sup> 1999 and Law No. 12 of May 3<sup>rd</sup> 1999.

#### **d) Rights resulting from the Patent**

The holder of a patent of a product or a process, shall have an impediment right with respect to third parties conducting certain activities related with the patented object. This right is classed according to the type of patent.

Patent of a product: The holder shall have the right to prevent or impede that others:

1. Manufacture the product.
2. Offer for sale, sell or use the product, or importation or storing of the product for any of such purposes.

Patent of a process: The holder shall have the right to prevent or impede that others:

1. Use the protected process.
2. Manufacture, offer for sale, sell or import or store the product obtained by means of the patented process.

The owner shall have the right to assign or to transfer these rights to third parties, as well as to grant exploitation licenses to one or several persons.

#### **e) Effectiveness**

Is effective for 20 non extendable years, as of the filing of the patent application.

#### **f) Formalities**

Application for invention patent entails the following steps.

- i) Filing of the original documents accompanied by two copies thereof.
- ii) All documents shall be accompanied by the respective translations into Spanish.
- iii) Application shall be presented by means of a certified lawyer.
- iv) Applicant may be natural or a juridical person. Juridical persons shall present a certificate attesting to its existence and legal representation.
- v) If the applicant is not the inventor, the application shall be accompanied by an assign document or other document attesting to the right of the applicant to obtain the patent.
- vi) An application shall only cover one invention or a group of inventions related to each other as to constitute a sole inventive concept.
- vii) The application shall include :

- a. Identification and domicile of the applicant.
  - b. Description of the invention.
    - Name of the invention, preferable with no more than ten words. The title shall denote the type of the invention (of a product, of use, etc.).
    - Field of Technology of the invention.
    - Previous technology known to the applicant, as well as references to the previous documents and publications concerning the said technology.
    - Clear and full description of the invention. It is preferable to use the International Measures System. The summary shall not exceed of, approximately, 200 words. Description may vary in accordance with the type of invention.
      - Product or chemical compound: Its identity, preparation and use or application.
      - Chemical process: Phases or steps, type of reaction and necessary re-agents and conditions.
      - Machines, devices or systems: Structure or organization and functioning.
      - Products or articles: Method of manufacturing.
      - Mixtures: Ingredients.
    - Description of drawings, if any, or of chemical formula.
    - Description of the way to perform or put into practice, using examples and references of the drawings.
    - The way in which the invention may be produced or used in some activity, except if it results evident from the description or of the nature of the invention.
  - c. A document that, at first sight, includes one or more claims.
  - d. Receipt attesting to the payment of the tax rate and the filing rights set forth by the law.
- viii) After reception of the application, the DIGERPI performs a **formal examination** in order to check if patentability requirements are met. Requirements of novelty and inventive activity shall not be studied at this stage, except if it is something too notorious, and at this time DIGERPI will reject the application. If a correction is in order, an extendable term of 6 months is granted to correct what is to be corrected. If the applicant fails to correct the deficiencies, the application is declared abandoned.
- ix) After examination hereinbefore, the DIGERPI will inform the applicant that in order to continue the proceeding, the applicant shall request the preparation of the **report on the state of the art** within the period of fourteen months following the filing of the application (in absence of deficiencies to be corrected), or within the term of one month following the notification by DIGERPI stating that deficiencies have been corrected.

- x) DIGERPI will order the **publication** in the BORPI of the **patent application** after eighteen month of the filing or as of the date of the claimed priority. This shall be ordered after completion of the formal examination and the request of the report on the state of the art.
- xi) Once completed the **report on the state of the art** (the term for is eight months) DIGERPI will **publish** it in the BORPI and will notify it to the applicant.
- xii) Third parties may present their **remarks** with respect to the report on the state of the art within the two months following the publication. The writ shall be notified to the applicant, who will have two months to make comments and/or modify the claims.
- xiii) Independently of the terms of the report on the state of the art and the remarks by third parties, the patent will be granted. This means that, even if the report and the remarks are against the application, the DIGERPI, all the same, shall grant the patent. Third parties shall resort to competent jurisdiction to demand the nullity of the patent. A conception inspired by Spanish legislation.
- xiv) DIGERPI will **deny**, totally or partially, the application if the object thereof is deemed not patentable, or if the application continues to be defective. DIGERPI will also deny the patent, in the corresponding part, for lack of distinctness of the description or the claims that prevents, totally or in part, the preparation of the report on the state of the art.
- xv) The rights deriving from an application or a patent may be **assigned or transferred** totally or partially. Such transfer shall be recorded in the DGERPI to produce the due effects with respect to third parties.
- xvi) Execution of **exploitation licenses** and **mergers, change of name or domicile** of the holder of a patent shall all be recorded, in order to produce the due effects with respect to third parties.

#### g) Nullity

Any interested party may demand before competent courts the nullity under the following circumstances:

- i) The patent was granted in contravention of the legislation concerning :
  - a. Novelty/inventive activity/susceptible of industrial application.
  - b. Definition of use and process patents.
  - c. Products or processes not considered as inventions.
  - d. Patentability exceptions.
  - e. Identification and domicile of the applicant.
  - f. Description of the invention.
- ii) When, by reason of a modification or division of the application, the patent granted included claims substantiated for subjects not contained in the application previously filed.

In case a patent were granted to a person not entitled to have it, **nullity** may only be demanded by the person entitled to the referred right. This action prescribes after eight years as of the date of then patent.

## **h) Caducity**

Caducity of a patent of invention shall be declared in the following cases :

1. Expiration of validity term.
2. Failure to pay the rights under Chapter II, Title IX of Law 35, within the prescribed term or within the period of grace of six months following the term.

## **i) Cover:**

Pursuant to Article 4bis of Paris Convention, the patent granted in Panama shall only protect within the Republic of Panama, therefore it does not imply international cover, regardless of adscription or not to the Paris Convention.

## **9. Utility Model**

It refers to all forms, configurations or dispositions of elements of some artifact, tool, instrument, mechanism or other object, or of any of its parts, that result in a better or different functioning, use or manufacturing of the object intended for the application thereof, or that add some utility, advantage or technical effect thereto, that did not exist before.

Alike inventions, the utility model shall be a novelty and applicable to industry. Furthermore, it shall be substantially different with respect to previous utility models or inventions, and shall not violate the law, the public order, morals and mores, and only its legitimate creator or assignee may file for its registration.

Registration as utility model shall not proceed in the following cases :

1. Processes.
2. Chemical substances or compounds, whether metallurgic or of any other class.
3. Inventions related to living materials.
4. The matter excluded from protection by invention patents under Law No. 35 and Decree No. 7.

The holder of a utility model is favored by a right of impediment vis-à-vis third parties conducting some activities in relation with the patented object: Manufacturing of a product incorporating the utility model protected, offering for sale, selling pr use of that same product, or its importation or storing for the purpose of the activities previously mentioned.

Stated period of time for the registry of utility models shall be ten (10)non extendable years as of the application filing date.

Concerning registration requirements, apply the same as for patents.

Last, the conversion of the application for invention patent into application for utility model and vice-versa is permitted, subject to the possibility of the said conversion in relation with the object to be protected.

## **10. Industrial Model and Drawing**

The **industrial model** is a tri-dimensional form serving as type or pattern for the manufacturing of an industrial product, endowing it with a special appearance, as long as it does not imply technical effects.

On the other hand, **industrial drawing** refers to all combination of forms, lines or colors that, once incorporated in an industrial product, endow it with a peculiar aspect of its own. It is essentially bi-dimensional.

The industrial model or drawing shall be a novelty, otherwise any interested person may demand its nullity. Novelty is ascertained by the promotion received by the industrial model or drawing. Additionally, it cannot offend morals or mores.

Application for registry shall include :

1. Identification and domiciles of the applicant and the creator of the model or drawing. If the applicant is a juridical person, a certification of its existence and legal representation issued by competent authority of the country of incorporation shall be presented.
2. Indication of the type or kind of product it shall be applied to, and the class or classes of the said products according to international classification adopted.
3. A graphical representation of the industrial model or drawing.
4. An introductory note pointing out the industrial object in question and the application of preference.
5. A description of the industrial model or drawing that shall refer briefly to the graphical reproduction of the industrial model or drawing.
6. The essential characteristics of the industrial model or drawing that provide the originality and novelty, the distinct appearance and characteristics of its own.
7. A scale model or prototype when required by DIGERPI.
8. Receipt attesting to the mandatory tax rate and rights payment.

The holder shall have a right of impediment similar to those established for the industrial model.

The industrial model and drawing may be protected automatically for two years as of its first publication in Panama. However, registration is preferable considering that it entails 10 years protection as of the date of presentation of the application in Panama, and extendible for an additional period of five years.

After fulfillment of formalities, the application is published in the *Boletín de la Propiedad Industrial* (Bulletin of the Industrial Property). At this stage of the proceeding, third parties claiming opposition rights with respect to a given application, are able to act within the two months following the date of the said publication. If no opposition is introduced, or if sentence favors the applicant, the registry will be granted.

In addition to protection granted by the Law 35 of 1996, industrial model and drawing may be protected under copyrights frame, governed by Law 15 of August 8<sup>th</sup>, 1994, implemented by means of Decree 261 of October 3<sup>rd</sup>, 1995.

## **11. Industrial and Trade Secret**

It refers to any information, entailing trade or industrial application, kept confidential by a natural or juridical person for obtaining or maintaining competitive or economic advantages *vis-à-vis* third parties, while engaged in economic activities, and having adopted the means or systems sufficient to protect its confidential character and access restrictions.

To be considered a secret, the information shall not be of public knowledge resulting evident for a specialist on the field, or publicized by legal disposition or judicial order.

Law 35 of 1996 protects industrial and commercial secrets without need for registration in the DIGERPI. Protection shall consist of the right of the holder of the secret to demand the suspension of the publicizing of the secret and the compensation for damages.

However, this protection is subject to the adoption, by the holder, of measures sufficient as to the preserve confidentiality of the secret or restrain access thereof. For example, to use the word “secret”, keep the secret in a safe place, warning about the secret or confidentiality to the persons to which the secret is transmitted or having access to it, warning of the prohibition concerning publicizing, etc.