

## INTELLECTUAL PROPERTY LAW

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### Trademarks

**T**he registration and the substantive regulation regarding trademarks and other distinctive signs are regulated by the Ley de Marcas y otros Signos Distintivos, [Trademark and Other Distinctive Signs Law], No. 7978.

Law 7978 provides for the registration of trademarks, service marks, certification marks, collective marks, for a 10-year term, renewable indefinitely. It is also possible to register Trade Names and Commercial Slogans, which in certain cases have an indefinite term of registration. The law also provides for the protection of appellations of origin and geographical indications.

Marks may consist of any sign or combination of signs, namely words, numbers, figures, monograms, pictures, combinations of lines and colors. It is also possible to register the form, product presentation and configuration, their containers and packaging, as well as outlet or store means. The law also provides for the registration of sound marks.

The Trademark Law provides for a substantive examination of all applications, as well as an opposition procedure, prior to the registration of the mark.

### Patents, Industrial Designs, Utility Models

The Ley de Patentes de Invención, Dibujos, Modelos Industriales, Modelos de Utilidad, [Patent, Drawings, Industrial Models, Utility Models Law] No. 6867 regulates the registration and protection of patents and design patents.

The Patent Law provides for the patentability of all kind on inventions including products, machines, tools, processes, provided that the invention is new, involves an inventive step (non-obviousness) and has industrial applicability.

The following inventions are excluded from patent protection: inventions contrary to public order, moral, health; plants, animals, essentially biological processes for the production of plants or animals, diagnostic, therapeutic and surgical methods. The following are not regarded as inventions and therefore not patentable: business or economic methods or principles, aesthetic creations, merely mental activities, scientific theories, mathematical methods and computer programs, considered as such.

The law provides for a one-year priority term for patent applications filed within any country of the Paris Union. In addition, the law provides for a one year grace period for any disclosure made of the invention, prior to the application date, provided that such disclosure have been made by

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the applicant or due to breach of contract or of a trade secret obligation. Patents must be registered before the Industrial Property Registry. Patent protection is afforded for a term of 20 years from the application date.

The law also provides exclusive rights to those industrial drawings and models, which provide a special form to an industrial product. Utility models are also protected and are defined as any new form or disposition of known tools, work instruments or utensils, which provide a better or special form for its use.

Utility models, industrial drawings and models must be registered before the Industrial Property Office. Their term of protection is of 10 years.

Patents may be subject to compulsory licenses in case of lack of industrial Exploitation, dependent patents, antitrust violations and public utility.

### **Copyrights and Neighboring Rights**

Author rights and neighboring rights are regulated by the Ley de Derechos de Autor y Derechos Conexos, [Author Rights and Neighboring Rights Law], No. 6683.

Author rights are afforded to the author of all kind of artistic and literary works, including musical compositions, books, paintings, drawings, photographs, architectural works, choreographic works, theatrical works, films, software, etc.

Author rights consist of economic and moral rights. Economic rights include the exclusive right to the reproduction, translation, adapta-

tion, communication, broadcast, performance, distribution and rental of the protected work. Economic rights may be subject to all kind of licenses and to its partial or total transfer.

Moral rights provide the author with the right of maintaining the work unpublished, paternity rights, defend his/her honor or reputation as an author, to prevent or stop the reproduction or communication of the work in case it has been deformed or altered, make successive modifications to the work and to withdraw the work from circulation, after due indemnification to affected parties. Moral rights are personal rights and may not be transferred or forfeited.

Neighboring rights basically consist of exclusive rights afforded to the works of performers, phonogram and video producers and broadcasting entities.

The term of protection for works protected under the Author Rights law is of the life of the author plus 70 years after his/her death. In the case of neighboring rights, the term of protection is of 70 years from December 31, of the year on which the performance was made, the first publication of the phonogram or when the work was broadcasted. The registration or deposit of author and neighboring rights before the Author



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Rights Registry is not required or mandatory in order to be subject to legal protection. However, in certain cases registration is recommended.

### **Trade Secrets**

Trade Secret protection is regulated by the Ley de Información No Divulgada [Undisclosed Information Law], No. 7975.

Protection is afforded to undisclosed information provided that such information is secret, that reasonable and proportional measures have been adopted to keep it secret and that it has commercial value.

Trade Secrets may be transferred or subject to licensing.

### **Layout-Design of Integrated Circuits**

Law No. 7961 provides exclusive rights to the original layout design of integrated circuits.

The layout designs must be registered before the Industrial Property Registry. The term of protection is of 10 years from the earliest of the following relevant dates: (a) the last day of the year on which the first commercial exploitation of the design took place, or (b) the date of application to register the design.

The application to register the design must be filed within a term of two years, from the first commercial exploitation of the design.

### **Enforcement of Rights**

The Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual, [Intellectual Property Rights Enforcement Procedures Law], No. 8039, provides for

several measures for the protection and enforcement of Intellectual Property Rights.

Specifically, it provides for preliminary injunctions, civil and criminal actions against IPR infringement, border measures, etc. Most forms of Intellectual Property rights infringement, including trademark counterfeiting and copyright piracy, are considered crimes and are subject to economic fines and prison remedies. Law 8039 also provides for statutory or predetermined damages as an option to regular damages caused with the infringement of copyrights and trademarks rights.

### **Plant Varieties**

The protection of new plant varieties is regulated by the Ley de Protección de las Obtenciones Vegetales, No. 8631 [Protection of Obtained Vegetable Law] and the International Convention for the Protection of New Varieties of Plants (UPOV) (1991). Law 8631 provides for an exclusive right for the breeder of new, distinct, uniform, homogeneous, stable and denominated plant varieties, for a term of a 20-year term. This law also provides for diverse priority rights and reciprocity with countries part of UPOV. Breeder's rights are subject to different exceptions and limitations, including the farmer exception provided by UPOV. Plant varieties applications are subject to a substantive examination and registered before the Oficina Nacional de Semillas [National Seed Office].

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### **International Treaties**

Costa Rica has ratified the following international treaties regarding Intellectual Property Rights:

Paris Convention for the Protection of Industrial Property (Berne Convention for the Protection of Literary and Artistic Works (Universal Copyright Convention (Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (TRIPS Agreement (Lisbon Arrangement for the Protection of Appellations of Origin (WIPO Copyright Treaty (WCT) (WIPO Performances and Phonograms Treaty (WPPT) (Brussels Convention Relating to the

Distribution of Programme-Carrying Signals Transmitted by Satellite (Patent Cooperation Treaty (PCT) and its regulations (Biological Diversity Convention and Annexes I and II – International Convention for the Protection of New Varieties of Plants (UPOV) (1991) – Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedures – Trademark Law Treaty

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NOTE: As of October 2008, there is one IPR related bill still pending before the Costa Rican Congress, which is required for the adhesion of Costa Rica to the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR). CAFTA-DR was approved via a referendum held on October 2007.