

I. THE PCT

The PCT is the most important Multilateral Treaty on Patent Cooperation (Patent Cooperation Treaty: PCT). It is effective since 1978 and is managed by the WIPO (World Intellectual Property Organization) which estimates that each year there are over 100,000 patent applications, confirming their importance for market integration and progress of nations.

Following the criterion of the World Intellectual Property Organization (WIPO), a patent is a title that recognizes the right to exclusively exploit an invention by preventing others from manufacturing, selling or using it without consent of the owner. That is, it is an exclusive right granted for an invention, understood as a product or process that provides, in general, a new way of doing something or a new technical solution to a problem. The counterpart of the Patent is that it is available to the general public for their knowledge.

A patent is a property right, and like any property right, closely following the concepts developed by the modern economic analysis of law, its primary function is to “exclude others” in this case from an illicit manufacture and / or unauthorized reproduction of the patented product or process. As it is noticeable, the right granted by a patent is not so much to manufacture, offer in the market and use the object of the patent, which always has and may exercise the title holder, but above all and singularly, “the right to exclude others” from manufacturing, using or introduction of the patented product or process.

In most cases, the duration of the patent is 20 years from the date of filing of the application. To keep it in force it is necessary to pay annual fees as from the first anniversary of filing.



This monopoly allows exploiting the creation economically. After this period of time, the Government' protection ceases and the invention enters as heritage of humanity. For practical purposes of illustration, the medicines used for cancer treatments.

The PCT system allows inventors and applicants requesting simultaneously in a large number of countries, patent protection for an invention by filing a single international application in a single patent office. Thanks to the filing and processing of patent applications through PCT:

II. THE PCT IN LATIN AMERICA

In Latin America, the PCT has been successful and has been endorsed by the signatures of Antigua and Barbuda, Barbados, Belize, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, USA, Ecuador, El Salvador, Guatemala, Honduras Mexico, Nicaragua, Peru, Saint Lucia and Trinidad and Tobago.

Country	Patents requested in 2005	Patents requested in 2006
Argentina	5.640	5.876
Bolivia	357	240
Brasil	14.060	19.001
Chile	3.494	3.730
Colombia	1.761	*
Costa Rica	494	667
Cuba	241	257
Ecuador	553	682
El Salvador	301	281
Guatemala	395	528
México	14.436	15.500
Nicaragua	194	295



Panamá	380	511
Paraguay	265	386
Perú	1.021	1.242
Rep. Dominicana	227	297
Uruguay	773	891
Venezuela	2.756	2.600

Another important treaty related to patents with broad acceptance in Latin America is the Union Convention of Paris. This agreement provides that any invention patent application filed in the proper manner, as well as any utility model submitted in the same way in any of the signatory countries of the agreement, has in any other country a right of priority for patent filing.

These periods are 12 months for patents of invention and utility models and six months for industrial designs or models and trade marks or any other element subject to intellectual property law.

The signatories of the agreement are: Antigua and Barbuda, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, USA, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, etc.

III. CHARACTERISTICS OF THE PATENT SYSTEM OF SOME LATIN AMERICAN COUNTRIES

COLOMBIA

1. Institution in charge As provided in Decree 2153 of 1992, the Superintendence of Industry and Commerce is the National Office responsible for the Industrial Property Administration.



2. LEGAL PERSONALITY

The Superintendence is a technical body, which enjoys of administrative, financial and budget autonomy and its activity is aimed at strengthening business development processes and satisfaction levels of the Colombian consumer.

1. ADMINISTRATION OF JUSTICE

The ordinary courts have jurisdiction in cases of infringement of intellectual property rights through specialized circuit civil courts, pursuant to Article 17 of the Code of Civil Procedure to establish its jurisdiction to hear at first instance proceedings related to “patents, industrial designs and models, trademarks, trade names and emblems, and others relating to Industrial Property,” which are not attributable to administrative authorities or the administrative court.

In cases of criminal infringement of Intellectual Property Rights, the Code of Criminal Procedure provides that corresponds to the Attorney General's Office to direct, conduct and coordinate investigations in criminal matters. In the trial stage the original jurisdiction lies with the circuit courts, the District Courts of appeal and the Supreme Court in the case of appeal.

The Criminal Code provides various acts constituting crimes for infringement of intellectual property rights, punishable by imprisonment and fine.

CHILE

1. INSTITUTION IN CHARGE According to the provisions of law number 20,254 the national entity is the National Institute of Industrial Property

2. LEGAL PERSONALITY

The National Institute of Industrial Property is a technical and legal agency responsible for the management and attention of industrial property services.



It is functionally decentralized, with legal personality, its own patrimony, and indefinite duration,

3. KEY FEATURES

- a) To be the entity responsible for all administrative actions relating to the recognition and enforcement of the registration protection granted by the industrial property law, corresponding, among others, the preparation, maintenance and custody of the records, endorsements and transfers; emission of titles and certificates, maintenance and publicity of documentation, as appropriate.
- b) To serve as a consultative and advisory body of the President of the Republic in matters related to industrial property and report at the request of the competent authorities, the draft of laws and other regulations that affect this area.
- c) To propose, through the Ministry of Economy, Development and Reconstruction, the signature or accession of Chile to international treaties or conventions relating to industrial property, as well as to denounce and maintain, in coordination with the relevant ministries, links of cooperation with foreign authorities and international entities working in this field.
- d) To promote initiatives and develop activities to disseminate the knowledge of industrial property, elaborate statistics, perform studies on the matter and provide information services to users.
- e) To obtain, collect and classify patent information and facilitate access to that of free availability, in order to promote technology transfer and technological research and innovation in the country.
- f) To collect the resources assigned to it by law, for themselves or third parties. These include those set forth in international treaties.
- g) To issue reports as required by the relevant authorities on matters within its competence.



- h) To certify the adequacy of the experts involved in the procedure for granting industrial property rights and disputes that are made known to the National Director, after qualification of their skills.

ECUADOR

1. INSTITUTION IN CHARGE

Ecuadorian Institute of Intellectual Property (EIIP). This organization conducts in a general way the areas of Industrial Property, Copyright and Related Rights and Vegetable Varieties, in administrative, technical and operational ambits.

2. LEGAL PERSONALITY

The Intellectual Property Law established the Ecuadorian Institute of Intellectual Property (EIIP). The EIIP is the competent national office to deal with all matters relating to industrial property, competition is exercised through the National Direction of Industrial Property.

The Ecuadorian Institute of Intellectual Property EIIP is a legal entity with its own assets, administrative, economic, financial, and operational autonomy, based in the city of Quito.

In Ecuador, according to the Intellectual Property Act, violation of any intellectual property rights gives rise to the exercise of civil and administrative actions, without prejudice to any criminal proceedings that might arise, if the act is a statutory offense.

3. ADMINISTRATION OF JUSTICE

Civil Actions

To hear disputes over Intellectual Property in the first instance the competent persons are, the district judges of Intellectual Property and, on appeal, the District Courts of Intellectual Property. Appeals to infer on this matter will be known by the Intellectual Property Chamber of the Supreme Court of Justice.



Competition in intellectual property matter is set pursuant to the rules established by the Code of Civil Proceedings. The judges of the place where the offense was committed also have jurisdiction to hear these cases.

In criminal matter it is punishable by imprisonment, taking into consideration the value of the damage, who in violation of intellectual property rights, stores, manufactures, uses with commercial purposes, offers for sale, sells, imports or exports:

- a) A product protected by a patent of invention or utility model obtained in the country.
- b) A product manufactured using a process protected by a patent of invention obtained in the country.
- c) A product covered by an industrial design or model registered in the country.
- d) A plant variety registered in the country, as well as its reproduction, propagation or multiplication material.
- e) A layout-design (topography) registered in the country, a semiconductor circuit incorporating the layout-design (topography) or an article incorporating such semiconductor circuit.
- f) A product or service that uses an unregistered trademark identical or similar to a known trademark or of high renown, registered in the country or abroad.
- g) A product or service that uses an unregistered trademark identical or similar to a trademark registered in the country.
- h) A product or service that uses an unregistered trademark or geographical indication, identical or similar to a geographical indication registered in the country.

In the case of paragraphs g) and h) the products or services using an unregistered sign, must be identical or similar to the goods or services protected by the registered trademarks or geographical indications in the country.

IV. IMPORTANT LEGISLATION IN LATIN AMERICA

BOLIVIA	COLOMBIA	ECUADOR	PERU	VENEZUELA
<ul style="list-style-type: none"> - Industrial Privileges Act 1916. - Regulatory Trademarks Act of 1918. - Commercial Code - Criminal Code - SD. 5470 5/6/1960: periods of validity of patents. - S.D. 9364 8/27/1970: restrictions on the patentability of chemical and biological products - S.D. 4/19/1961 9673: provisions on patents for pharmaceutical and chemical products - S.D. 9530 2/12/1972: conditions for 	<ul style="list-style-type: none"> - Political Constitution, Articles 150 and 189 - Commercial Code -Administrative Litigious Code - D. 2591 of 2000, regulates aspects of implementation of the Industrial Property System, - Resolution 210 of 2001, formalities and procedures of Industrial Property. - Res 17585 of 2001, regulates procedures for compulsory licensing of patents. - D. 2085 of 2002, regulates aspects related to the information provided to 	<ul style="list-style-type: none"> - Book II of the Intellectual Property Law - Paris Convention for the Protection of Industrial Property - <u>Patent Cooperation Treaty (PCT)</u> - Nice Agreement. International Classification of Goods and Services for the Registration of trademarks. - Strasbourg agreement. International Patent Classification. - Locarno Agreement. International Classification for Industrial Designs and Models. 	<ul style="list-style-type: none"> - Industrial Property Law of 1996 - Paris Convention for the Protection of Industrial Property - General Inter-American Convention for Trademark and Commercial Protection - Nice Agreement. International Classification of Goods and Services for the Registration of Trademarks. - Vienna Agreement - Strasbourg Agreement. International Patent Classification. 	<ul style="list-style-type: none"> - Bolivarian Convention of 1911 Agreement on Invention Patents and Privileges.” - Industrial Property Law 1955. - Paris Convention for the Protection of Industrial Property. - Decision 486. Common Provisions on the Protection of Industrial Property

<p>procedures. - S.D. 20791 5/10/1985: adoption of the Nice Agreement - S.D. 20793 5/10/1985: gives effect to the Strasbourg Agreement. - S.D.24367 10/18/1996: industrial property standards. - S.D. 04/25/1997 24 581: Creates the Interagency Committee for the Protection and Defense of Intellectual Property. - Paris Convention for the Protection of Industrial Property. Accession by Act 1482 of 1993 - Decision 486. Common Provisions on the Protection of Industrial Property.</p>	<p>obtain a health registration for new chemical entities in the field of medicines. - General Inter- American Convention for Trademark and Commercial Protection - Paris Convention for the Protection of Industrial Property - <u>Patent Cooperation Treaty (PCT)</u> - Nice Agreement. International Classification of Goods and Services for the Registration of Trademarks. - Strasbourg Agreement. International Patent Classification. - Locarno Agreement. International Classification for Industrial Designs.</p>	<p>- Decision 486. Common Provisions on the Protection of Industrial Property.</p>	<p>- Locarno Agreement. International Classification for Industrial Designs and Models. - Decision 486. Common Provisions on the Protection of Industrial Property. <u>Patent Cooperation Treaty (PCT)</u></p>	
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