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NEW ANDEAN RULES ON INDUSTRIAL PROPERTY DECISION 689

The Commission of the Andean Community has just approved Decision 689, allowing members countries to adequate certain provisions of Decision 486 –Common Regulations on Industrial Property-granting rights to each country member of the Andean Community –Bolivia, Colombia, Ecuador, and Peru- to strengthen protection of Industrial Property rights through internal legislation. Decision 689 incorporates the following provisions:

1. By introducing an exception to article 9, it allows countries to establish conditions to reinstate priority rights on a patent or utility model, industrial design or trademark, for a term not more than two months beyond the established initial period.
2. It allows amendment of article 28 to introduce additional regulations related to divulgation of the invention, in sense of requiring applicant greater clarity in the description and sufficiency in such divulgation, so that there is no need for a person having knowledge of the state of the art to conduct undue experimentation.
3. It clarifies article 34 by establishing that reporting on omissions on the Spanish text of description and claims, will not be considered an extension of the invention if the new matter was contained in the priority application, if claimed.
4. Except in the case of patents for pharmaceutical products and processes, it grants rights to the members countries to compensate for undue delays in the grant of the patents, undue delays being those delays exceeding five years from filing date or three years from the date a petition for examination was filed and where such delays can only be attributable to the Patent Office.
5. Introduce a clarification to article 53, allowing countries to pass new legislation limiting patentee's rights, so to introduce a provision equal to the Bolar Exception.
6. It clarifies the rule of article 138 in that it allows countries to approve a multiclass trademark registration system.
7. It allows countries to implement article 140 of Decision 486 by means of fixing specific terms to satisfy formal requisites as detailed in such provision, without loss of filing rights.
8. It allows an exception to article 162 of Decision 486 establishing countries may decide that recordal of a license agreement be optional.
9. It clarifies article 202 of Decision 486 which establishes that an indication of origin will not be protected if this can generate confusion with a registered mark or with a mark subject to registration, provided the mark has been registered in good faith, or with a notorious mark.
10. It allows the countries to implement legislation on border measures in connection with trademark rights.

The new legislation establishes that by 20 August 2008, the countries members who wish to exercise this option must communicate the Secretary General of the Andean Community that they will proceed. Peru has already passed new legislation in line with the new Decision so Peru will exercise this right as of 1st January 2009.

THE NEW INDUSTRIAL PROPERTY ACT

The United States - Peru Trade Promotion Agreement (TPA), to enter into force at the beginning of 2009, mandates that, in order to comply with the trade commitments undertaken therein, Peru shall amend some internal rules and regulations on Intellectual Property so that such legislation is consistent with the obligations undertaken therein.

Acknowledging the need to generate a new legal framework, the Government has enacted Legislative Decree No. 1075, which shall enter into force at the same time as the TPA, under the name of "Legislative Decree approving the Supplementary Provisions to Decision 486 of the Andean Community Commission that establishes a Common Industrial Property System." As a result of this new law, and at the time it enters into force, Legislative Decree No. 823, The Industrial Property Act, shall be derogated, as shall any and all norms that contradict this new law.

This brief report analyzes the substantial amendments concerning the General Provisions, Rules on Patents, Rules on Trademarks, Provisions concerning the Appellation of Origin and the Provisions on Infringement Proceedings.

General Provisions

1. In accordance with the criteria established in the New Organizational Law of Indecopi, Legislative Decree No. 1073, the Trademark Office has been substituted by the Trademark Department and by the Trademark Commission. The Managing Director shall be called upon to try, in first instance, all non-contentious administrative proceedings that are not under the jurisdiction of the Commission; the Commission shall have jurisdiction over oppositions to Applications, Nullities, and Cancellations, whether automatically performed by the Administration or upon request of a Party, and the proceedings regarding infringements to trademark rights. Likewise, the Commission shall elaborate the policies and guidelines concerning the implementation and application of the rules and regulations.
2. The Inventions and New Technologies Division has been substituted by the Inventions and New Technologies Department and by the Inventions and New Technologies Commission. The Managing Director shall continue to be called upon to try administrative proceedings in first instance that are not under the jurisdiction of the Commission – specifically non-contentious administrative proceedings; the Commission shall have jurisdiction over oppositions to Applications, Nullities, whether automatically performed by the Administration or upon request of a Party, and the proceedings regarding infringements to Inventions and New Technologies Rights.
3. This Act points out that all Applications shall be filed in the Spanish language. The admissibility requirements –such as the description in the case of patents- shall be filed in the Spanish language; otherwise the application shall be rejected and not processed.
4. In order to record any change of ownership or pledges encumbered over Industrial Property Rights, unless the law requires a specific formality, it shall suffice to file any of the following documents:
 - A copy of the contract, certified by a Notary Public or by any other competent public authority, whereby it is certified that the document is a true and genuine copy of the original;
 - An excerpt of the contract where the change of ownership is evidenced, certified by a Notary Public or by any other competent public authority;
 - A non-certified Certificate of Transfer, including the information required by 1994 Trademark Law Treaty Regulations, signed by the two parties; or,
 - A non-certified Transfer instrument, including the information required by 1994 Trademark Law Treaty Regulations.

5. In order for the powers-of-attorney to be deemed valid, the name of the person who is signing the document granting the powers-of-attorney and the capacity or position empowering him/her to execute the instrument shall be stated as well as the date when it was granted.
6. It also establishes a period of time for abandonment of applications in the event the procedure has been paralyzed for causes attributable to the interested party, of thirty business days, unless the file is pending a decision.
7. In the event of patents and utility models applications, it is possible, exceptionally, to restore the priority rights for two additional months counted as from the expiration of the priority period, when it has been impossible for the applicant to file the application within the twelve months term. For the restoration of rights, it is necessary to file an affidavit with an explanation of the reasons why the application for a patent or utility model was not submitted within the twelve months term, including proof of evidence of such event to show that despite the obstacles, the interested party acted diligently.
8. This Act allows the assignment of the rights derived from an Application for Registration and, eventually, the licenses connected therewith.

Provisions on Patents

1. This Act clarifies the terms “clear and sufficient” referred to in article 28 of Decision 486. Disclosure of an invention shall be deemed clear and sufficient when a person in the trade with average skills in the technical field concerned does not need any further experience to carry it out as of the date when the application was filed; further experience means the one detailed in the description.

The invention is deemed sufficiently disclosed when the description is so clear, detailed, and full that it reasonably indicates to someone in the trade with average skills in the technical field concerned that the applicant held the invention on the filing date of the patent application, wherein holding implies that the applicant was capable of putting into practice the invention, with no further experience than the one disclosed in the description.

2. It is possible to request the correction of any material error. It is also possible to amend the application at any time during the process, without such amendment entailing a broadening of the protection applicable to the disclosure contained in the original application.

The Patent Office is authorized to ask an applicant to cure any omission in the description or in the claims, to complete drawings, when such omissions become obvious during the examination of applications. It is possible to cure the omitted information if such information was included in the validly claimed priority and if upon filing the Patent Application, applicant has submitted an affidavit in which it reserves the right to amend the application in case of omissions found in the claimed application.

3. Article 36 of Decision 486 allows to divide an application into two or more divisionals, but none of such divisionals may entail the broadening of the protection for the disclosure contained in the original application; the competent National Agency, at its sole discretion, may demand the division of the application if the original application failed to meet the invention unity requirements. It is now clear that the claims filed in a divided application may not contain the same subject matter whose protection is sought in the originally submitted application; therefore the claims in a divided application shall be different from the original claims in terms of content and wording.
4. Unless it is concerned with the patent for pharmaceutical product or the method to obtain a pharmaceutical product, the duration of the patent concession may be adjusted if there were

unreasonable delays in the granting of such patent, (i) more than five (5) years computed as from the filing of the application; or (ii) over three (3) years between the application for the substantial examination and the granting of the patent. Delays attributable to the holder of the patent shall not be counted. If these criteria are met, the adjustment shall be carried out at a rate of one day for every two days of delay.

5. The holder of a patent may not exercise the rights granted therein when a third party uses the subject matter protected to generate the information necessary to support an Application for Approval to market pharmaceutical products or agriculture chemicals.

Provisions on Trademarks

1. For changes of ownership resulting from mergers, it shall suffice to enclose a copy of the document evidencing the merger, issued by a competent authority. This copy shall be certified by the authority that issued the document or by a Notary Public or by any other competent public authority.
2. The term to declare the abandonment of an application due to the applicant's failure to act is cut down from three (03) months to thirty (30) business days. An application shall automatically be declared abandoned when the file has been inactive due to applicant's failure to act for thirty business days, unless otherwise provided by law.
3. Rules and regulations have been enacted in connection with "reckless oppositions" established in Decision 486, and it has established that such oppositions can be penalized with fines. It is worth mentioning, however, that this Legislative Decree does not determine when an opposition shall be considered reckless. The fines can be as high as fifty (50) Tax Units (TU) – today, this would roughly be equal to US 62,500.00.
4. Perhaps one of the most significant changes is the possibility for applicant to include in the Application for Trademark, products and services under one or several classes of the International Nice Classification of Products and Services. Moving from a one-class system into a multi-class system stems from the obligation undertaken by Peru under the TPA to sign the 1994 Trademark Law Treaty.

For this purpose, the applicant shall expressly list the products and/or services that he/she wishes to claim, which shall be designated by their names and grouped in accordance with the classes of the International Classification.

- A multi-class application may later be divided into two or more applications; in this case, the new application shall be stamped with a new docket number, however it shall keep the filing date of the original application and the priority benefit, if any. Divisions may be requested at any time during the trademark registration procedure.
5. As in the case of the Division of an Application, the holder of a registered Sign who is claiming several products and/or services may divide the Record into two or more divided records. The Divided Register shall be governed by the requirements applicable to the Division of Applications.
 6. Concerning commercial slogans, the rule establishes that during the effectiveness of a commercial slogan registration, the holder may ask the Authority for such commercial slogan to be linked to another trademark registered under its name and in the same class under the International Classification of Products and Services.
 7. A petition for protection of an Appellation of Origin may be rejected if it may infringe trademarks rights, whether requested or registered before, or well-known trademarks.

Provisions on Infringement Proceedings

1. The Act establishes the jurisdiction of the Trademark Commission regarding confusion acts and/or the wrongful use of reputation. The Act establishes that the Commission shall have jurisdiction to decide on claims concerning acts of unfair competition under the modalities of confusion and wrongful use of reputation in connection with (i) a registered industrial property, or (ii) a well-known distinctive sign, whether or not it is registered, or (iii) a commercial name, whether or not it is registered, or (iv) a component of the industrial property and components which without creating industrial property rights, are related to the use of an industrial property element, in any of these cases as long as such claims are filed by the titleholder.
2. The range of fines established under Legislative Decree N° 823 remains the same, wherein the maximum fine is (150) Tax Units. Nevertheless, this Act takes a step further establishing that in the event that the real wrongful benefit resulting from the infringing act is greater than seventy five (75) Tax Units, the fine could be as high as 20% of the sales or gross revenue resulting from the act of infringement.

Moreover, this Act establishes new criteria for the determination of the penalty (which could be an admonition or a fine), where the previous legislation had only established criteria to calculate the indemnification amount. The new criteria to be used in calculating the penalty are: 1) the real or potential unlawful benefit resulting from the act of infringement; 2) the likelihood of detecting the act of infringement; 3) the modality and scope of the act of infringement; 4) the effects of the act of infringement; 5) the duration over time of the act of infringement; 6) recidivism of the act of infringement; and 6) bad faith intent to commit the act of infringement.

3. This Act punishes false accusations with a fine that could be as high as fifty (50) Tax Units. In this sense, false accusation is defined as the behavior by means of which intentionally or in the absence of reasonable causes, an individual or company or legal entity, whether private or public, whether or not state-owned, whether for profit or not for profit, is accused of committing a punishable act of infringement. This false accusation within the scope of acts of infringements of trademarks could reflect what the law calls within an opposition proceeding as a reckless opposition, wrongly omitting, however, the definition of what a reckless opposition actually is, as described under item 3 of the Provisions on Trademarks.
4. For the trademark infringement proceedings, the Act establishes a maximum term of one hundred and eighty (180) business days for the rendering of a judgment concerning a dispute.
5. As for the motions for appeal, this Act expressly establishes that the appeals filed against judgments that bring an instance to an end; rulings establishing fines; acts that determine the inability to continue the proceeding; and acts that could hinder the parties' defense shall be granted with staying effect.
6. In line with the policies in force, which promote the national appellations of origin, this Act forbids the trade from using the phrase "appellation of origin," "D.O." (acronym in Spanish meaning Appellation of Origin), or any other like term, on products that do not count with the appellation of origin or for which the corresponding use license has not been obtained from the competent agency. Surely, this prohibition is protecting the interests of those who hold the rights on foreign appellations of origin registered in Peru.
7. This Act reiterates the prohibition established in the former Industrial Property Act, Legislative Decree 823, regarding the use of the phrase "registered trademark", "M.R." (acronym in Spanish meaning registered trademark), ® or any other like term, along with the signs that not having a registration in Peru. Using such identification symbols with a trademark not registered in Peru is penalized by seizing the products and destroying the identification signs.

PROTECTION OF TEST DATA OR OTHER UNDISCLOSED INFORMATION OF PHARMACEUTICAL PRODUCTS

Article 16.10.2 of the Trade Promotion Agreement between Peru and the United States determines the need to protect test data or test results related to pharmaceutical products.

Paragraph (a) establishes that if a Party requires, as prior condition for marketing approval of a pharmaceutical product using a new chemical entity, the filing of undisclosed test data and other information required to establish whether the use of such product involves any risk and is effective, the Party requiring such filing shall provide protection against disclosure of the information filed by the applicants, in such cases where the production of such information entails significant efforts, unless such disclosure is necessary to protect the public or unless the necessary measures are taken to ensure the information is protected against any unfair commercial use.

With regard to information filed after the TPA effective date [as established in paragraph (a)], paragraph (b) establishes that no person other than the one filing such information may use the same, without the prior authorization of the latter, to support a product approval application within a reasonable period of time following such filing, normally set in five (5) years as from the date when the Party granted its approval to the person who filed the information required for marketing the product.

Article 16.10.2, paragraph (c) provides that whenever a Party relies on the marketing approval granted by the other Party –without requiring the filing of studies or data – and grants approval within a period of six (6) months following the filing by the other Party of a complete application for marketing approval, the reasonable period of time for exclusive use of the information starts on the date of the first marketing approval on which it relies.

Article 16.10.4 stipulates that whenever a Party authorizes, as prior condition for the marketing approval of a pharmaceutical product, that someone other than the person who originally filed the product safety or efficiency information may rely on the evidence contained in the safety and efficiency information of a previously approved product –including evidence of prior marketing approval in any other territory – such Party may (optionally) implement any administrative and court procedure and other remedies such as pretrial precautionary measures or equivalent effective preventive measures, so as to prevent other persons from marketing a product that is protected by a patent, or claiming the product or the approved method of use thereof, or to determine whether the patent holder was informed about the identity of any other person requesting marketing approval to enter the market during the effective term of a patent identified with the approval Authority as one that covers the product.

The Peruvian Government has passed Legislative Decree No. 1072 dated June 27, 2008 and published on June 28, for protection of test data and other undisclosed information related to pharmaceutical products.

The rule establishes the obligation to protect test data on the terms agreed in the TPA.

The scope of the expression “new chemical entity” has been defined therein; accordingly, a new chemical entity shall be understood as a biologically active portion that is responsible for the pharmacological or physiological action of an active principle, which at the time of the health registration application was not included in any other health registration previously granted in the country, with the proviso that the following shall not be considered new chemical entities: (i) therapeutic uses or indications other than those authorized in previous health registrations of the same chemical entity or combinations of known chemical entities; (ii) modifications in the means of administration, dosage forms, pharmacokinetics, dissolution times and bioavailability, authorized in previous health registrations of the same chemical entity; (iii) changes in the pharmaceutical forms or formulations of already registered

chemical entities; (iv) salts, esters, ethers, complexes, chelates, clathrates, isomers, metabolites, co-crystals, polymorphs, solvates, pure forms, particle size, pro-drugs, or such chemical structures of any form, presentation or expression whatsoever that are based on a previously registered chemical entity, and (v) the combination of a new chemical entity and a known chemical entity.

It is further established that the protection period, which is normally five years, is calculated as from the date when the health registration was granted in the national territory; or from the date of the first marketing approval if the health registration is based on the marketing approval granted in another country and is granted within six months following the filing date of the complete application docket with the pertinent Health Authorities. A potential limitation has been introduced to the temporary scope of protection, to the extent that the Health Authority shall take into account the nature of the data and the efforts and expenses incurred in its production, so as to determine the actual protection period.

The law does not prevent a third party from requesting the health registration for a pharmaceutical product which test data and other undisclosed information are protected, using its own test data as evidence of the product safety and efficiency, regardless any data filed by another applicant within the protection period of such other applicant, provided that the registration decision of the Health Authority is not based on the previously protected test data or other undisclosed information.

The law also establishes the possibility of terminating the protection whenever it is determined within the scope of an administrative or court procedure that such protection has been granted in violation of the provisions of the law.

Finally, transparency measures have been approved, according to which any information on the identity of the health registration applicant and on the pharmaceutical product which test data and other undisclosed information are filed, shall be published in the Official Gazette "El Peruano" once and on the applicant's account and risk, so that any third party that considers that its rights have been affected may have the chance to file an objection, enclosing the pertinent information, within a period of thirty (30) working days following the publication of the respective application, without prejudice to any publication made by the Health Authority, on the Internet portal, related to the health registrations granted, indicating if there is any protection of test data or other undisclosed information, if applicable.

Said legal rule shall be effective as from the effective date of the Trade Promotion Agreement entered into by and between Peru and the United States. Such protection shall only be granted to pharmaceutical products which approval application is filed following the effective date of the aforementioned legal rule.

DATA PROTECTION RELATED TO AGRICULTURAL CHEMICALS

Article 16.10.1 of the Trade Promotion Agreement between Peru and the United States establishes that a Party requiring or allowing, as prior condition for granting the marketing approval for a new agricultural chemical, the filing of information on the product's safety or efficiency, shall not authorize another person to market the same or a similar product, if not authorized by the person that previously filed such safety or efficiency information, when such request is based on: (i) safety or efficiency information filed as supporting data for marketing approval; or (ii) evidence of marketing approval, wherein such protection is granted for no less than ten (10) years as from the date of marketing approval in the territory of the Party.

Similarly, if a Party requires or allows, in relation to the granting of marketing approval for a new agricultural chemical, the filing of evidence on the safety or efficiency of a product previously approved in another territory, such as evidence of previous marketing approval in the other territory, the country shall not, without the prior consent of the person that previously filed the safety or efficiency information, authorize someone else to market the same or a similar product based on: (i) the safety or efficiency information filed as supporting data for the previous marketing approval in the other territory; or (ii) evidence of the previous marketing approval in the other territory, for a period of no less than ten (10) years as from the date of marketing approval of the new product in the territory of the Party.

The TPA defines a new agricultural chemical as one containing a chemical entity that has not been previously approved in the territory of the Party for use in agricultural chemicals.

The Government of Peru has passed Legislative Decree No. 1074, approving the Rule on Protection of Safety and Efficiency Information in the Marketing Authorization Procedure of Chemical Pesticides for Agriculture Use, dated June 7, 2008 and published on June 28, 2008, wherein Articles 1 and 2 include the contents of Article 16.10.1(a) and 16.10.1(b) of the Trade Promotion Agreement between Peru and the United States, but with the following provisos:

- a. A third party shall be authorized to use the protected product only to generate the information required to support the application for marketing approval of a chemical for agriculture use, wherein any product produced under such legislative authorization may be imported only to generate information in order to meet the marketing approval requirements of the product once the protection established under both the Trade Promotion Agreement and the Legislative Decree, i.e. 10 years, has expired; in addition, the product may only be exported to meet the marketing approval requirements;
- b. The concept "chemical entity" relates to an active ingredient used in a chemical pesticide for agriculture use, with the further proviso that the national Authority shall not grant additional protection to such chemical entity based on the discovery of (i) new uses, (ii) new use methods, (iii) second uses, (iv) or other indications or second indications, combinations of known chemical entities, other dosage forms, other application means and other presentations.

The aforementioned Legislative Decree shall be effective as from the effective date of the Trade Promotion Agreement between Peru and the United States, which is estimated to happen on January 1, 2009. Such legislative rule shall govern the national registration applications of chemical pesticides for agriculture use filed as from the effective date of the Legislative Decree, which means that all applications for marketing approval of chemical pesticides for agriculture use that are filed between June 28, 2008 and the above-mentioned effective date shall not be entitled to data protection as established in the TPA or in said Legislative Decree.

BORDER MEASURES

As part of the process for implementing the Trade Promotion Agreement entered into between the Republic of Peru and the United States of America, and taking into consideration that Peru is member of the World Trade Organization – WTO, Legislative Decree 1092 of June 27th, 2008 was published on June 28th, approving Border Measures for the protection of copyrights or related rights and trademark rights.

A pirate good is defined as the non-authorized copy of a work protected in the manufacturing country, when the production of said copy entails a copyright infringement, according to the laws of the importer country.

A counterfeited good is defined as a good, including packaging, having a trademark identical to a trademark already registered for such good, without the owner's authorization, or having a trademark which essential characteristics cannot make it different from the registered trademark, thereby infringing the rights of the trademark owner.

The main characteristics of this law are the following:

- a) The Legislative Decree can be enforced when the goods to be exported, imported or which are in transit at borders of our country, are presumably pirate or counterfeited goods, not being included in this law said goods that are found in small amounts and which cannot be considered as having commercial nature or which are part of the personal luggage of a traveller.
- b) The enforcement of border measures can be requested by a party or can be sua sponte, that is, directly ordered by the customs administration of our country.
- c) At the time of requesting protection at borders, the customs administration will be able to request the petitioner to establish a bond, a promissory oath or a security, to cover possible damages caused to the importer, exporter and/or consignee of the goods, said bond being of immediate performance if the competent authority determines that the goods do not infringe any rights.
- d) The enforcement of border measures can also be sua sponte when there are reasonable suspicions to presume that they are counterfeited or pirate goods; nevertheless, customs administration is exempted from any liabilities for interventions made, according to this Legislative Decree.
- e) The Legislative Decree which approves border measures for the protection of copyrights or related rights and of trademark rights should be implemented in a six-month term at the latest from the date of its publication in the official gazette; nevertheless, it will come into force as of the effectiveness of the Trade Promotion Agreement signed between the Republic of Peru and the United States of America, estimated by January 1st, 2009.

The customs administration sua sponte process for initiating the enforcement of border measures will become effective only one year after the agreement above-mentioned comes into effect.

COPYRIGHT LAW

Copyright Law, Legislative Decree 822, provides for the protection of literary and artistic works and establishes the rights of the author, its successors-in-interest and of holders of rights related to copyrights, recognized by the law.

Several amendments have been made to the Copyright Law by Legislative Decree 1076, published on June 28th, 2008.

- A. In article 2 of the Copyright Law, two new clauses referred to two new definitions have been included:

Clause 50: Information on Management of Rights:

1. Information identifying the work, interpretation or execution, or phonogram; information of the author of the work, artist singer or performer of the interpretation, or information of the holder of any rights over the work, interpretation or performance, or phonogram;
2. Information on the terms and conditions of use of the works, interpretations or performances, or phonograms; or
3. Any number or code representing such information.

Clause 51: Effective Technological Measure:

Is any technology, device or component that, in the normal course of its operation, controls the legal access to a work, interpretation or performance or phonogram, or which protects any copyrights or related rights.

- B. Articles 136°, 196° and 197° of the law have been amended:

1. Article 136, paragraph c), is amended by establishing that producers of phonograms have the exclusive right to authorize or prohibit making the phonograms available to public, so that members of the public may access them from the place and at the time each of them decides.
2. Article 196° established in a restrictive way that the holders of rights recognized by law, their representatives or collective management organizations could request the cease of an illegal activity by the infringer, as well as indemnification for physical and reputation damages arising from said violation. The amendment extends this article and modifies it in such a way that now the holders of any of the rights recognized in the present law, their representatives or collective management organizations, as well as their exclusive licensees and other licensees duly authorized having legal power and the authority to enforce said rights, without prejudice to other corresponding actions, will be able to request the cease of illegal activity by the infringer and request indemnification for physical and reputation damages arising from violation and for profits obtained by the infringer ascribable to the infringement and not considered at the time of calculating the amount of damages (illegal benefit) or, at the right holder's choice, the preestablished indemnification, as well as the payment of court costs and attorneys' fees.

Moreover, new provisions are incorporated to article 196°, identified as articles 196A, 196B and 196C, which establish the following:

Article 196A.- The present article establishes that to provide proper legal protection and effective legal remedies against infringements, the actions indicated can be brought against whoever evades without authorization any effective measure, whoever manufactures, imports, distributes, offers to the public, provides and/or trades devices not authorized for trading, to avoid an effective technology measure.

Article 196B.- It establishes that the following acts of avoidance are not included in the scope of article 196A:

- I. inverse engineering activities in computer program, when the only purpose is to achieve the interoperability of a program independently created with other programs;
- II. inclusion in a technology, product, service or device, of a component preventing the on-line access of minors to inappropriate content;
- III. activities in good faith authorized by the owner of a computer, computer system or computer network, when they have the purpose of improving the security of said systems.
- IV. access by libraries, archives or non-profit educational institutions to any of the works mentioned in the present law, to which there is no other way of accessing, in order to take decisions regarding acquisitions.
- V. non-infringing actions having as purpose to identify and disabling the capability of gathering or diffusing staff identification data, reflecting on line activities of a natural person.
- VI. non-infringing uses in reports of 4 years of validity at the most, which demonstrate the existence of substantial evidence of a real or potential impact in those non-infringing uses.

Exceptions and limitations set forth will be applied provided they do not damage the proper legal protection or the effectiveness of legal remedies against the avoidance of effective technological measures.

Article 196C.- Actions established by article 196 can be brought against any person who without authorization led to, allowed, made easier or covered up an infringement of copyrights or related rights, involving information on Management of Rights.

Article 196D.- Legally authorized activities of research, protection, security of the information or intelligence, conducted by government employees, agents or contractors are not comprised within the scope of articles 196A and 196C.

“Information Security” means the activities conducted to identify and deal with the vulnerability of a computer, a computer system or a government computer network.

- C. Moreover, new provisions have been added to article 197° which established that the cease of illegal activities could involve several punishments. These two articles 197A and 197B grant the judiciary authorities the chance of:
 - C.1 Destroying the infringing goods of the copyrights and related rights, at the request of the right holder, unless exceptional circumstances, also being able to order that the materials and implements used in the manufacture of the infringing merchandise be also destroyed without any recovery, as well as removing the merchandise from the trading channels. (Article 197 A)
 - C.2 Ordering the infringer to deliver any and all information available with respect to other infringers or people involved in any aspect of the infringement and/or means of production or distribution channels, the infringer being compelled to give said information to the right holder. (Article 197 B).
- D. Finally, article 198°, paragraph b) has been amended to include the immediate suspension of the illegal export, among the precautionary measures that the Judge may order at the request of the party.

The amendments made to Legislative Decree 822, Copyright Law, should have come into effect on the following day of their publication in the Official Journal El Peruano, that is, on the date hereof they are already in force.

LABELLING

Law 28405 established the information that should appear on the labelling of manufactured industrial goods for final use or consumption, traded in the national territory, providing for the minimum required information the labelling should contain, without prejudice to the enforcement of rules for special cases, such as cosmetics and personal hygiene products, food and beverage, pharmaceuticals and related goods, agrochemical goods, explosives and footwear.

A. Several amendments have been made to the General Labelling Law:

- a. Legislative Decree 1056, Law for the Implementation of Matters related to the Fulfilment of the Regime of Merchandise Origin in the Frame of the Trade Agreements executed by Peru, establishes that information on the condition of the good has to obligatorily appear on the labelling, in the case of a defective, used, reconstructed or remanufactured good. This information has to be in Spanish. The importer will be required to present an affidavit certifying that the goods carry said information. False information with respect to the condition of the good has to be informed to the Attorney General's Office to proceed with the respective criminal complaint. The National Superintendency of Tax Administration – SUNAT is compelled to verify the compliance with this information during the physical inspection of the goods.

The requirement of informing on the condition of the good takes effect on December 28th, 2008.

- b. Legislative Decree 1059, which approves the General Law of Agricultural Health, establishes in its Fifth Final Complementary Provision special rules in connection with the labelling of chemical pesticides for agricultural use, biological products for the control of agricultural plagues and pharmaceutical and biological products for veterinarian use and food for animals, manufactured in the country or abroad, being compulsory that the labelling appears in understandable words in Spanish language and in accordance with the legal system of measure units.

Said Legislative Decree also establishes that implementing regulations to be issued within ninety working days starting on June 28th, will provide for the special rules in connection with the labelling of chemical pesticides for agricultural use, biological agents and products for the control of agricultural plagues, pharmaceutical and biological products for veterinarian use and food for animals.

- c. Legislative Decree 1045, amending the Consumer Protection Law, provides for labelling regulations on food products, and establishes that any food with respect to which nutritional properties are declared, has to bear a label describing nutrients and their amounts in the product, taking into consideration the rules of the Codex Alimentarius. This law takes effect on July 27th, 2008.

B. Regulations of the General Law for the Prevention and Control of Tobacco Consumption Risks, Executive Decree 015-2008-SA, published on July 5th, 2008, establish special labelling rules for any form of package of tobacco products and for the advertising of said products. It shall be unlawful to include in any form of tobacco package, phrases, images or other messages suggesting less toxicity and/or less health damage or which further associate success and popularity with the consumption of tobacco and/or suggesting that the latter entails any type of health benefit.

Cigarette packages and, in general, all wrappings or packages of tobacco products addressed to the final consumer shall have printed on 50% of one of its main faces, some of the health warnings regarding smoking risks, approved in said legal provision.

Health warnings shall be printed on any wrapping or package containing tobacco products to be sold to the final consumer. Importers shall be responsible for the compliance with the warning labelling for tobacco products manufactured abroad.