The New Mexican Patent Legal System: A Comparative Analysis with the North American Free Trade Agreement

By: Alejandro López Velarde*

INTRODUCTION

The increasing global economy has made the subject of intellectual property a key factor in international trade and development. This new scenario has caused the Mexican government to change its intellectual property legal system affording protection to intellectual property rights through legal ordinances where both local and foreign investments are treated with clearly defined laws which give security to owners in return for their investment of capital.

This article briefly summarizes the changes in the Mexican patent legal system and points out the improvements as to the protection and patentability of inventions and the implementing legislation needed to put it completely in line with NAFTA.

A. Changes in the Intellectual Property Legal System in Mexico

During the administration of President Echeverría, three statutory ordinances were enacted: **(i)** The Law on the Control and Registration of Transfer of Technology and the Use and Exploitation of Patents and Trademarks ("The Technology Law");[1] **(ii)** The Law to Promote Mexican Investment and Regulate Foreign Investment ("The Investment to Promote Mexican Investment and Regulate Foreign Investment ("The Investment Law");[2] **(iii)** The Inventions and Trademarks Law ("LIM").[3] They responded to the thought that "foreign capital had come to represent and obstacle in Mexico's economic growth, a process evident in the balance of payments, by the increased earnings by foreign capital and interest payments, patents and trademark royalty payments.[4]

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* Mr. López-Velarde was an in-house counsel for the Human Relations and Administrative Corporate Division of Pemex (Petroleos Mexicanos). Currently he is partner in the law firm LOPEZ VELARDE, WILSON, ABOGADOS, S.C. This article was published in 9 News. Of the Int'l L. Sec. (State Bar of Tex.) 32-53 (1993).

[1] See Mex. Ley sobre el Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, [hereinafter cited as "The Technology Law"] *pub'd* in the *Diario Oficial* ("D:O:") Dec. 30, 1972. The goal of the Technology Law was: **(i)** to strengthen the negotiation position of Mexican transferees; **(ii)** to prevent abuses by foreign technology transferors; and **(iii)** to contribute to the government's developmental goals for the economy. For discussion of the events that led to adoption of the Technology Law, see Oscar Ramos Garza, México ante la Inversión Extranjera [Mexico before the Foreign Investment], 29-62) Docal 3d. ed. 1974).

[2] See Mex. Ley para promover la Inversión Mexicana y Regular la Inversión Extranjera, [hereinafter referred as "The Investment Law"] *pub'd* in D.O. Mar. 9, 1973. The Investment Law, among other things, mandates majority Mexican participation in a percentage of at least fifty-one percent in business activities. Id. Art. 5.

[3] See Mex. Ley de Invenciones y Marcas [hereinafter cited as "LIM" *pub'd* in D.O. Feb. 10, 1976.

[4] See Jorge Pérez Vargas, *Major Innovations Regarding Trade and Service Marks in the Newly Revised Mexican Law on Inventions and Marks—A Mexican Perspective,* 66 Trademark Rep. 188, 189 (1976).

The foregoing Echeverrian trilogy of legal ordinances was viewed as an important factor in limiting foreign investment in Mexico.[5]

When López Portillo became President of Mexico, problems began to arise due to prolonged protectionist, monopolistic structures and consequently less competitive Mexican products.[6] Furthermore, the oil boom in the early 1980s permitted the tolerance of low levels of productivity in Mexican industries. "Mexico's abundance of oil in an oil starved world gave the country a short-lived sense of economic independence.[7] But, in 1982, the oil boom ended and correction of Mexico's industrial problems became imperative, at an extremely high cost. The country's foreign debt grew beyond the nation's ability to repay; as a result, Mexico became the second most indebted country in Latin America.[8]

With Miguel de la Madrid as President of the Republic of Mexico in 1983, Mexico began the process of reforming its import-substitution oriented economy to an open market economy by opening up to foreign competition. As evidence of this open policy:

a. Mexico joined the General Agreement on Tariffs and Trade ("GATT") on August 24, 1986;[9]

b. Congress passed, *inter alia*, the amendments to the LIM.[10] It was considered that the LIM did not bring about the new modernization that Mexico required to take care of certain

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[5] See Ewell E. Murphy, Jr., *The Echeverrian Wall: Two Perspectives on Foreign Investment and Licensing in Mexico,* 17 Tex. Int'l L.J. 135, 151 (1982).

[6] See Fernando Sánchez Ugarte, *Mexico's New Foreign Investment Climate,* 12 Hous. J. Int0l L. 243, 244 (1990).

[7] Id.

[8] See Jorge Arciniega & Nancy Ramírez, *México's New Industrial Property Law—New Protection for Foreign Investors,* MTLR, Oct. 1, 1991, *available in* LEXIS, Nexis Library, MTLR File. See also Luis Rubio, *Mexico in perspective: An essay on Mexico's Economic Reform and the Political Consequences,* 12 Hous. J. Int'l L. 235, 235 (1990) (protectionist economic administrations of Echeverría and López Portillo). Also in 1982, the Technology Law was repealed by the Law on the Control and Registration of Transfer of Technology and the Use and Exploitation of Patents and Trademarks. See Mex. Ley sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, [hereinafter cited as "The 1982 Technology Law"] *pub'd* in D.O. Jan 11, 1982. The 1982 Technology Law did not overcome the defensive stage of the Law of 1972, since this Law did not contemplate an aggresidve promotion to impulse the technological development of the country. See Jaime Alvarez Soberanis, *Comentarios y Observaciones acerca de la Nueva Ley sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas [Comments and Ovservations About the New Law on the Control and Registration of Transfer of Technology and the Use and Explitation of Patents and Trademarks],* 14 Anuario del Departamento de Derecho de la Universidad Iberoamericana, A.C. [hereinafter cited as "Universidad Iberoamericana"] 396 (1982). "The [1982] Technology Law heavily regulated transfers of various technologies (or forms of industrial property) into Mexico, including patent licenses, industrial model or drawing licenses, trademark and trade name licenses, transfer of know-how, technical assistance, computer programs, certain copyright licenses and the provision of operational, management, advisory, consulting and supervisory services." See Jouce G. Manzero et al., *A Guide to Industrial Property, Franchising and Licensing in Mexico*, 1992 Int'l Trade L. J. 33

[9] Mexico had a positive 1986 trade balance of $e.48 billion, while oil exports dropped 58.4 percent compared to 1985 and totaled only $5.53 billion. Non-petroleum exports increased 33.8 percent over the previous year. Total public sector imports totaled $3.21 billion in 1986, down 26.1 percent from the previous year. Private sector imports totaled $8.16 billion, down 10.3 percent from 1985." See 4 Int'l Trade Rep. (BNA) No. 7, at 243 (Feb. 18, 1987).

[10] See LIM *pub'd* in D.O. Jan. 16, 1987. Moreover, in 1983 article 73 of the Mexican Constitution was amended and Congress was given the power to legislate foreign investments (see Mex. Constitución Política de los Estados Unidos Mexicanos [hereinafter cited as "Mexican Constitution"], *pub'd* in D.O. Feb. 5, 1917; also a new law authorizing the Executive Branch to liberalize foreign trade was passed. See Mex. Ley Reglamentaria del Artículo 131 de la

economic problems. The main changes and additions to the Lim as to patents were: **(i)** new rules regarding the patentability of the inventions;[11] **(ii)** novelty test;[12] **(iii)** a term of 14 years after the date of grant of the patent;[13] **(iv)** licenses, compulsory licenses and license of public utility; [14] and **(v)** lapse and invalidity;[15] and

c. The LIM Regulation that is in force today was published in 1988.[16] The administration of President Carlos Salinas has continued to follow the open market policy. In the first two years of his sex-year term, his administration took significant steps to restructure an economic policy designed in the Echeverrian administration to restrict foreign investment.[17] Six months after Salinas' presidential inauguration on May 16, 1989, the new Regulation for investment Law was published.[18] The Investment Regulation clearly indicates that Mexico's President wishes and welcomes new foreign investment.[19] A cornerstone provision is article 5, which granted foreign investors the right to establish one hundred percent foreign-owned enterprises in Mexico, without approval from the National Foreign Investment Commission.[20] Foreigners are still prohibited, however, from investing in a few areas such as petroleum, basic petrochemicals, hydrocarbons, nuclear fission, rail industries and areas where foreign ownership is limited to a minority interest.[21]

With the goal of promoting foreign investment, thereby modernizing the Mexican economy, creating jobs, fostering competition, inducing technology transfer, increasing exports and advancing Mexico's ability to compete internationally, the current economic model of development has been based on free trade an openness to foreign investment. On June 10, 1990, President Salinas and President Bush instructed their foreign trade ministers to initiate

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Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior, *pub'd* in D.O. Jan. 13, 1986

[11] See LIM *supra* note 3 arts. 4-5, 9-10.

[12] Id. Art. 20.

[13] Id. Art. 40

[14] Id. Arts. 44-45, 47, 50-53, 56-57.

[15] Id. Arts. 48, 59-60. Foreign investors saw the new amendments as nothing concrete. The discretionary concepts regarding the suspension and compulsory licensing were the basis of their criticisms. See 6 Int'l Trade Rep. (BNA) No. 48, at 1604 (Dec. 6, 1989).

[16] See Mex. Reglamento de la Ley de Invenciones y Marcas, [hereinafter cited as " The LIM Regulation"] *pub'd* in D.O. Aug. 30, 1988.

[17] See Mark O'C. O'Brien & Carlos Müggenburg R.V., *Salinastroika: Recent Developments in Technolgoy Transfer Law in Mexico,* 22 St. Mary's L.J. 753, 777 (1991).

[18] See Mex. Reglamento de la Ley de Invenciones y Marcas, [hereinafter cited as "The LIM Regulation"] *pub'd* in D.O. May 16, 1989.

[19] Under the Mexican Constitution, the President is granted by article 89, paragraph I, the power to issue final regulations which will lead to a better application and understanding of Legislative Law; nevertheless, the scope of the regulations is necessarily limited to that of the underlying Law. In the event that any presidential acts go beyond or contradict those of the Legislature, the acts would be considered a breach of the Constitutional regime. For a better understanding of the President's regulating power, see Alejandro López-Velarde, Inconstitucionalidad del Artículo 46 fracción I del Código Fiscal de la Federación a la Luz del Artículo 16 Constitucional [Unconstitutionality of Article 46, Paragraph I of the Federation Fiscal Code in the Light of Article 16 of the Constitution], Thesis, Universidad Nacional Autónoma de México 1, 62-64 (Dec. 6, 1991).

[20] Artilce 5 of the Investment Regulation directly contravened Investment Law of 1973. For a discussion of the Investment Regulation, see David B. Hodgins, *Mexico's 1989 Foreign Investment Regulations: A significant step Forward, But is it enough?*, 12 Hous. J. Int'l L. 361-381 (1990).

[21] See Mexican Constitution *supra* note 10 art. 28, The Investment Law *supra* note 2 arts. 4, 5.

preliminary consultations regarding a Free Trade Agreement. On August 8, 1990, Jaime Serra Puche, Mexican trade Secretary, and Carla Hills, United States Trade Representative, met and recommended such an Agreement to their Presidents.[22]

In addition to NAFTA and the free trade agreement signed with Chile, Mexico is lobbying to be part of the free trade agreements[23] with **(i)** Central Amercian nations, **(ii)** the so called "Group of Three" (Mexico, Colombia and Venezuela), **(iii)** Portugal and Spain, **(iv)** with MERCOSUR countries (Argentina, Brazil, Uruguay, and Paraguay) next year and **(v)** member countries of the Pacific Rim.[24]

In spite of the above mentioned agreements, NAFTA is the most important trade agreement in Mexico's open policy since the United States represents its primary commercial partner and for the United States, Mexico represents its third largest commercial partner.[25]

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[22] See Francisco Velázquez, *Mexican Perspective on the North American Free Trade Agreement,* MTLR, Jan 1, 1992, *available* in LEXIS, Nexis Library, MTLR File. In the mid-1980s, Mexico entered into bilateral agreements with the United States and Canada, sending strong signals to the world about Mexico's willingness to substantially Improve its trade relations with its neighbors. These include the following agreements: **(i)** Agreement to establish a Joint Commission on Commerce & Trade (1981); **(ii)** Understanding Regarding Subsidies and Countervailing Duties (1985); **(iii)** Understanding on Certain Steel and other Products (1985), renegotiated 1986), 1989); **(iv)** Understanding Concerning a Framework of Principles and Procedures for Consultations Regarding Trade and Investment Relations (1987); **(v)** Textile Agreement (1988); **(vi)** Understanding Regarding Trade and Investment Facilitation Talks Including action plan) (1989); **(vii)** Understanding Regarding the Joint Committee for Investment and Trade (1989); **(viii)**Textile Agreement (renegotiated 1990); **(ix)** Agreement on the Development and Facilitation of Tourism (1989); and **(x)** Tax Information Exchange Agreement (1989). See Eleanor Roberts Lewis, *The North American Free Trade Agreement: Historical Background and Summary of the Fast Track Process, in Mexico: Historical Background and Summary of the Fast Track Process,* in Mexico: Investment and Trade; Progress and Prospects, at 23, 27-28 (PLI Com. L & Prac. Course Handbook Series No. A-653). Also published in 1990 was the new Regulation to the Law for the Control and Registration of Transfers of Technology and the Use and Exploitation of Patents and Trademarks. See Mex. Reglamento de la Ley sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, [hereinafter cited as "The 1990 Technolgy Regulation"] *pub'd* in D.O. Jan. 9, 1990. The adoption of the 1990 Technology Regulation" wrought very significant changes to the legal rules applicable to the transfer of technology that is virtually free of the restrictions which previously plagued the registration of franchise agreements and the problems associated with governmental discretion that so clouded and delayed the process in the past." See John B. McKnight & Carlos Müggenburg R. V., *Mexico's Industrial Property and Copyright Law: Attracting Business with the Increased Protection of Intellectual Property Rights,* Newsl. of the Int'l L. Sec. (state Bar of Tex.) July 1992, at 24.

[23] Mexico has established that if NAFTA is rejected in the United States, México will pursue bilateral discussions with Canada, the Europeans, and Japan. See 10 Int'l Trade Rep. (BNA) No. 15, at 628 (Apr. 14, 1993).

[24] See 10 Int'l Trade Rep (BNA) No. 32, (Aug. 11, 1993); and 10 Int'l Trade Rep. (BNA) No. 24 at 989 (June 16, 1993).

[25] See Alan S. Gutterman, *Changing Trends in the Content and Purpose of Mexico's Intellectual Property Right Regime,* 20 Ga. J. Int'l & Comp. L. 515, 519 (1990). "At the end of 1990, accumulated direct foreign investment in Mexico amounted to approximately U.S. $31 Billion, 62.3 percent of which is in the manufacturing sector, 29 percent in services, 6.8 percent in commerce, 1.6 percent in mining, and 0.3 percent in agriculture and fisheries. By country of origin, 62.9 percent from France, 2.3 percent from Spain, and 9.7 percent from other countries." See Velázquez, *supra* note 22. According to a study release don April 8, 1993 by the Conference Board of Canada, Mexico could replace Canada as the United States' largest trading partner. "The ratio of U.S. exports to Canada relative to U.S. exports to Mexico has already shifted heavily toward Mexico . . . Over the past five years, trade between Canada and the united States has grown, but not nearly at the rate that the trade has grown between Mexico and the United States has grown, but not nearly at the rate that the trade has grown between Mexico and the United States. Between 1986 and 1991, U.S. exports to Mexico nearly tripled, from $12 billion (all figures in U.S. dollars) to more that $33 billion. During the same period, Canadian exports to the United States increased by an average 7

Mexico has been considered as one of the countries with one of the most open policies in the world;[26] however, it has not been an easy task since Mexico previously had an extremely protectionist legal system. As a result, dramatic changes have been and will be taking place during the following months.[27]

B. Current Framework of the Intellectual Property System.

In order to understand not only the Mexican legal patent system but also the whole intellectual property system, we must consider all kind of existing legal ordinances. These ordinances are in hierarchical order described below according to the Supremacy Clause set forth in article 133 of the Mexican Constitution:[28]

1. The Mexican Constitution;[29]

2. International Treaties and Conventions;[30]

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percent a year, from $67 billion to $98 billion, and U.S. exports to Canada grew by 14 percent a year, to reach about $85 million in 1991." See 10 Int'l Trade Rep. (BNA) No. 15, at 629 (Apr. 14, 1993). Furthermore, "Mexico is expected to surpass Japan, Which accounts for about 11 percent of U.S. exports, and become the United States' second largest trading partner." Id.

[26] The General Agreement on Tariffs and Trade (GATT) has said that "The performance of the Mexican economy over the past five years demonstrates how liberalization of international trade and investment laws and a macroeconomic adjustment program can be mutually supportive." See 10 Int'l Trade Rep. (BNA) No. 16 at 658 (Apr. 21, 1993). According to a report made by GATT on April 20, 1993, Mexico is the leading exporter and importer in Latino America. Id.

[27] The Mexican Congress has promulgated new laws and implemented existing ones in order to obtain international reputation which will provide and environment as attractive as the alternatives available to investors in the industrialized world. In addition to the laws above mentioned, also issued *inter alia* have been: **(i)** the Antitrust Law (see Mex. Ley Federal de Competencia Económica, *pub'd* in D.O. Dec. 24, 1992); **(ii)** the new Antidumping Law passed and approved by the Senate on July 14, 1993; **(iii)** The Mining Law and its Regulation (100 percent foreign investment is allowed in some areas); **(iv)** the foreign Trade Law (see Mex. Ley de Comercio Exterior, *pub'd* in D.O. July 27, 1993); **(v)** the Ports Law (see Mex. Ley de Puertos, *pub'd* in D.O. July 19, 1993); **(vi)** the Nationality Law (see Mex. Ley de Nacionalidad, *pub'd* in D.O. June 21, 1993); **(vii)** Amendments to the Federal Code of Civil Procedure, and the Commercial Code regarding enforcement of foreign judgments and domestic and international arbitration (see Mex. *pub'd* in D.O. July 23, 1992 and July 22, 1993); and **(viii)** amendments to Customs Law (see Mex. Ley Aduanera, *pub'd* in D.O. July 26, 1993).

[28] The judges of each state shall conform their decisions to the said national Constitution, Laws and Treaties, notwithstanding any contradictory provisions that may appear in the Constitution or Laws of the states. See Mexican Constitution *supra* note 10 art. 133.

[29] The Mexican Constitution establishes the bases as to intellectual property as follows: 1. In the United States of Mexico, monopolies, monopolistic practices, state monopolies and tax exemptions are prohibited pursuant to the terms and conditions prescribed by the law. The Same prohibitions shall apply to an industrial protection title. But neither the privileges given for a fixed period of time to authors and artists for the protection of their works nor those given to inventors for their exclusive use and the perfection of their inventions are monopolies. Id. Art. 28. 2. Congress has the power to enact laws to promote Mexican investment, regulate foreign investment, transfer technology and generate, diffuse and apply scientific and technological knowledge necessary to national development. Id. Art. 73 (xxix-f). 3. The powers and duties of the President are, *inter alia*, to grant exclusive privileges of a limited time in accordance with the respective law to discoverers, inventors, or improvisers of any branch of industry. Id. Art. 89 (xv).

[30] Regarding patents, Mexico is a party to the following treaties and conventions: **(i)** Paris Convention for the Protection of Industrial Property of March 20, 1883, revised in Stockholm July 14, 1967 (see Mex. Convención de Paris, *pub'd* in D.O. Sept. 17, 1903); and **(ii)** agreement that established the World Intellectual Property Organization [hereinafter cited as "WIPO"] (see Mex. Convenio que Establece la Organización Mundial de la Propiedad

3. National Laws as to Intellectual Property:

A. The Law on the Promotion and Protection of Industrial Property ("**LPPI**") issued in 1991.[31] The **LPPI** has been the reference in Mexico for everything to do with the exclusive rights that the state recognizes and protects, during specific periods, for those who make industrially applicable inventions or for those who use particular trade indications to distinguish their goods and services on the market for the benefit of their customers.[32] The **LPPI** considerably increases the legal protection of Industrial Property in Mexico. Its intention is:

> To bring about a continuous process of technology and quality improvement in industrial and commercial activities and ultimately to enhance the country's international competitiveness through the local development of those factors. Greater legal security for industrial property rights will moreover attract foreign investment and facilitate the transfer of technology from outside the country.[33]

The **LPPI** replaces the Law of Inventions and Trademarks of 1976, and its amendments of 1987. In addition, it repeals the Law on the Control and Registration of Transfer of Technology and the Use and Exploitation of Patents and Trademarks of 1982 and its 1990 Regulation;[34]

B. The Regulation of the Law of Inventions and Trademarks ("**LIM** Regulation").[35] It was originally announced that the new **LPPI** Regulation would be issued in late 1991. Now it is believe that issuance of the new Regulation is linked to adoption of **NAFTA**; and

4. The Domestic Administrative System of the Intellectual Property Rights.[36]

Intelectual, *pub'd* in D.O. July 8, 1975). Mexico is not party, however, to the Patent Cooperation Treaty ("PCT") and the European Patent Treaty even though Mexico applies them in practice.

[31] See Mex. Ley de Fomento y Protección de la Propiedad Industrial [hereinafter cited as " LPPI"] *pub'd* in D.O. June 27, 1991, The sole announcement of a new law was sufficient to remove Mexico from the United States' Priority Watch List of countries that provide inadequate protection for united States Patents, Copyrights and Trademarks. See Peter D. Ehrenhaft, *Nifty Knotty NAFTA Issues: The Mexican Perspective on Chapter 17,* in Mexico: Investment and Trade; progress and Prospects, at 87,89 (PLI COM. L. & Prac. Course Handbook Series No. A-653, 1993). Before the issuance of the LPPI, the National Program for the Modernization of Industrial Property. Among other things it addresses that **(i)** transfer of technology will be encouraged through the revision of regulations covering the area, thereby eliminating excessive control; and **(ii)** existing infrastructure in the Patent and Trademark Registry will be modernized and administrative simplification measures will be introduced to provide useful and efficient service to the private sector. All violations of industrial property protection in trade and production will be forcefully dealt with. These measures will provide due protection for industrial property rights. See Mex. Programa Nacional de Modernización Industrial y del Comercio Exterior [National Program on the Industrial and Foreign Trade Modernization], *pub'd* in D.O.Jan 15, 1990, by the Secretary of Commerce and Industrial Development [hereinafter cited as "The Ministry"] at 1-6.

[32] See R. Villareal gonad, *The New Mexican Law on Industrial Property,* 30 WIPO 436, 436.

[33] Id. Furthermore, the LPPI has been enacted in Mexico as a hopeful precursor of NAFTA since it is intended to allay the concerns of U.S. and Canadian businesses regarding intellectual property rights protection and geneal enforcement problems that existed under the LIM. See Edwin Friesenhan, *Mexico's New Intellectual Property Law,* 1992 Int'l Trade L.J. 21. Herminio Blanco, chief Mexican negotiator for the NAFTA, stated that, "We want foreigners to bring the most advanced technology to our country without fearing that it will be plagiarized." See 8 Int'l Trade Rep. (BNA) No. 28 at 1038 (July 10, 1991).

[34] See LPPI *supra* note 31 art. 2 transitory.

[35] See LIM Regulation *supra* note 16.

PATENT REGULATION UNDER THE LPPI AND THE LIM REGULATION

Before negotiations for NAFTA took place, Mexico had already improved its intellectual property legal system.

The LPPI establishes substantive standards for handling patents in Mexico.[37] The requirements for an invention to be patented are **(i)** novelty,[38] **(ii)** inventive activity, and **(iii)** industrial application.[39]

The LPPI establishes the system of "first to file" in addressing rights to an invention.[40]

PATENTABLE INVENTIONS

One of the most outstanding aspects of the LPPI is the opening of patentability in almost all the scopes of scientific and technological development, including chemical-pharmaceutical products and medicines. Inventions referring to live material[41] are immediately patentable. [42] Among then we have **(i)** plant varieties, **(ii)** inventions relating to microorganism, such as those involving their use or those resulting from them, all types of microorganism such as bacteria, fungi, algae, viruses, microplasm, protozoa and cells that do not reproduce sexually, and **(iii)** biotechnological processes for obtaining pharmaceutical chemicals, medicines, beverages, food for animal and human consumption, fertilizers, pesticides, weedkillers and fungicides or products with a biological action.[43]

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[36] See Jaime Alvarez Soberanis, La Regulación de las Invenciones y Marcas y de la Transferencia de Tecnología [The Regulation of Inventions and Trademarks and the Transfer of Technology], 40 (Porrúa 1st. ed. 1979).

[37] Invention is defined as any human creation that allows matter or energy existing in nature to be transformed for utilization by man for the immediate satisfaction of a defined need. Moreover, industrially applicable processes or products shall be included among inventions. See LPPI *supra* note 31 art. 16.

[38] State of technology means "the body of technical knowledge that has been made public by oral or written description, by use or by any other means or dissemination of information both within the country and abroad." Id. Arts. 12 (i), (ii), 17. State of technology shall be used to determine whether an invention is new and the result of an inventive step. To determine whether an invention is new, the state of the technology shall be regarded as including all patent applications filed in Mexico prior to said date an still pending. The disclosure of an invention shall not prevent it from continuing to be considered new, when, within the 12 moths prior to the filing date of the patent application, or where applicable prior to the recognized priority date, the inventor or his successor in title has made the invention known by any means of communication or has displayed it at a national or international exhibition, as long as the evidentiary documents are included in the matter laid down in the LIM Regulation. Id. Art. 18.

[39] Id. Art. 15. See also Text of the North America Free Trade Agreement among the United States, Canada and Mexico dated Sept. 6, 1992 [hereinafter cited as "NAFTA"] art. 1709:1.

[40] See LPPI *supra* note 31 art. 42.

[41] Some exceptions to the live material list include **(i)** biological material as found in nature; **(ii)** genetic material; **(iii)** inventions relating to living matter comprised in the human body; **(iv)** plant and animal species and breeds; **(v)** biological processes for obtaining or reproducing plants, animals or varieties thereof, including genetic processes or those relating to material capable of self-duplication, either by itself or in any other indirect manner, when they are used in selecting or isolating available biological material and allowing it to act under natural conditions. Id. Art. 20 (ii) (a-e). *Compare* NAFTA *supra* note 39. Art. 1709:3.

[42] It was established in article 2 of the amendments of the LIM of 1987 that the inventions above mentioned would be patentable until January 16, 1997. See Mex. Reformas y Adiciones a la Ley de Invenciones y Marcas, *pub'd* in D.O. Jan. 16, 1987, art. 2 transitory.

[43] See LPPI *supra* note 31 art. 20(i). *Compare* LIM *supra* note 3 art. 10 (ix-xi) (these inventions were prohibited).

"The extension of patent protection to the specified inventions involving living matters are especially noteworthy, as Mexico has for years suffered from the lack of many of the pharmaceutical and agricultural chemical products commonplace in the industrial world."[44] Despite the opening, implementation will be required in order to expand even more the patentability areas, since NAFTA excludes from patentability, the following inventions: [45] **(i)** diagnostic, therapeutic and surgical methods for the treatment for humans or animals; **(ii)** plants and animals other than microorganisms; and **(iii)** essential processes for the production of plants or animals other than nonbiological and microbiological processes.[46]

PATENT PUBLICATION

Pending patent applications shall be published in the Industrial Property Gazette as soon as possible following a period of 18 months from the filing date of the application or where applicable from the date of recognized priority.[47] However, pending patent applications on the date of entry into force of the LPPI do not require publication, except those applications that incorporate products that were not patentable under the LIM.[48] The applicant may request that publication take place in advance; however, he or she will have to pay and additional fee for payments of governmental rights.[49]

NOVELTY TEST

After publication of the patent application has been made, the novelty test will be applied by the Patent Office which could require technical support from specialized national agencies and institutions.[50] Moreover, foreign exams made by foreign Patent Offices are acceptable. [51] The

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[44] Manzanero et al., *supra* note 8 at 36.

[45] The LPPI will need implementation in article 19 (ii) and (iv) (discoveries that make known or reveal things that already exist in nature, even though they were previously unknown to man, and computer programs are not considered inventions) and 20 (ii), a chapter regarding plant species, since Mexico will use its best efforts to adhere to the International Convention for the Protection of New Varieties of Plants ("UPOV") as soon as possible, bu at least two years after the signing of NAFTA. See NAFTA *supra* note 39 art. 1701: 1-2. Moreover, NAFTA article 1710 provides protection for layout designs of semiconductor integrated circuits. The LPPI does not grant protection to this kind of invention, but Mexico has committed itself to grant protection as soon as possible or within four years of the passage of NAFTA. Id. Annex 1710:9.

[46] Id. Art. 1709:3. All new and useful product and process inventions, including pharmaceuticals and other chemicals capable of industrial application, shall be patentable in all fields of technology. Id. 1709:1. Nonetheless, NAFTA countries are allowed to exclude inventions if preventing their commercial exploitation is necessary to protect public order o morality; protect human, animal or plant life or health; or avoid serious enfringement to nature or the environment.

[47] See LPPI *supra* note 31 art. 8, 52. LPPI does not provide any procedures for third party opposition to a pending patent application. The publication requirement was apparently designed to alert Mexican Industry to new technological developments. See Manzero et al., *supra* note 8 at 36. Once the patent has been granted, the patent owner may sep damages from third parties who make unauthorized use of the patented process or product prior to his having been granted the patent, or when use is made after the date publication of the application in the Gazette becomes effective. See LPPI *supra* note 31 art. 24.

[48] See LPPI *supra* note 31 arts. 10-11 transitories.

[49] See Mex. Ley Federal de Derechos (Federal Rights Law), *pub'd* in D.O. Dec. 18, 1992. art. 63 (iii). Publications made in advance require a fee of $490,000 Mexican pesos (about US$160).

[50] The LPPI also creates the Mexican Institute of Industrial Property, a decentralized public body under the authority of the Ministry. It is required to provide the Ministry with advisory services and technical support and the public with assistance and guidance in the field of industrial property. See LPPI *supra* note 31 art. 7.

LPPI does not establish the period in which the novelty test can be requested; therefore, it is suggested that the test be done within three months of the first anniversary of the patent application.[52] If the invention is considered patentable, upon the payment of fees the Ministry will issue patent letters or reject the application. In the case of rejection, the applicant may file a petition for reconsideration with the Ministry within 30 days.[53]

The exception to the rule of loss of novelty contemplated in the LIM regarding the disclosure of the invention applies to cases where the invention has been made public without commercial goals of any means.[54]

PARALLEL IMPORTS

The right conferred by a patent shall not apply to any person who markets, acquires or uses the patent product or the product or the product obtained by means of the patented process after the said product has been lawfully placed on the market.[55] The problem is the term "lawfully" since one can think of the case of the owner of a patent who has not obtained protection in a specific country and a local manufacturer makes the patented product and introduces it "lawfully" on the market. In such a case, the owner of the patent in Mexico shall have no recourse to prevent the import of this product to Mexico.[56]

TERM OF THE APPLICATION

The term of protection has been changed from 14 years after the date of grant of the patent to 20 years after the date of filing the patent application with the Ministry which does not significantly alter the period of protection; however, it does assure protection from infringement during the period from filing the patent application to the granting of the patent.[57] In the case of pharmaceutical chemicals or pharmaceutical products or processes for obtaining such products, the term of the patent may be extended an additional three years, provided that its owner grants a license for its use to any corporation with majority Mexican capital.[58]

USE OF THE PATENT

The LPPI considers use of the patented process to include manufacture and distribution or manufacture and marketing of the patent product carried out in Mexico, not only by the paten owner but also by the person to whom a license has been granted and registered with the Ministry, except in the case of a compulsory license.[59]

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[51] Id. Arts. 53-54. See also LIM *supra* note 3 art. 20 (it was already established).
[52] See Mariano Soni, *Aspectos Sobresalientes de la nueva Ley Mexicana de Fomento y Protección de la Propiedad Industrial [Outstanding Aspects of the new Mexican Law on the Promotion and Protection of the Industrial Property],* 1 Revista de la Barra Mexicana de Abogados [hereinafter cited as "El Foro"], 367, 372 (1991).
[53] See LPPI *supra* note 31 art. 200. Should rejection of the patent application be confirmed, an *amparo* suit may be filed with a Federal District Court.
[54] Id. Art. 18. *Compare* LIM *supra* note 3 art. 6.
[55] See LPPI *supra* note 31 art. 22 (ii).
[56] See Soni *supra* note 31 art. 22 (ii).
[57] See Manzero et al, *supra* note 8 at 36.
[58] See LPPI *supra* note 31 art. 23. *Compare* LIM *supra* note 3 art. 40.
[59] See LPPI *supra* note 31 art. 25, 69 and LIM *surpa* note 3 art. 47.

LICENSES AND ASSIGNMENTS

As mentioned before, the **LPPI** repealed the 1982 Technology Law and its 1990 Regulation did away with the National Register of Transfer of Technology ("NRTT"). As a result the license and assignment agreements on industrial property do not need to be recorded in such **NRTT**. Nevertheless, in order to protect patents against third parties, all licenses and assignments must be recorded in the Patent Office.[60]

The **LPPI** does not provide any reason for denying the registration of licensing contracts for patents, utility models or industrial models.

The **LLPI** maintains compulsory patent licensure upon the latter of either three years from grant of patent or four years from the filing of patent application of nonuse. Any person may apply to the Ministry for the grant of a compulsory license, unless there are justified technical or economic reasons for such nonuse or when the patent owner or licensee has been importing the patented product or a product using the patented process.[61]

NAFTA establishes that "Where the subject matter of a patent is a process for obtaining a product, each party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process. . ."[62] The **LPPI** does not address this provision; hence, implementation will be needed.

The payment of royalties under a compulsory license shall end when the patent lapses.[63]

INVENTORS' CERTIFICATES

Inventor's certificates did not grant any type of exclusivity to certificate holders by only the right to collect royalties fixed by the Mexican government from any one desiring to exploit the invention. Inventors' certificates are not established in the LPPI;[64] however, inventors? Certificates granted under the LIM will be valid until the expiration of the term granted in the corresponding certificate. Applications for inventors' certificates that are pending shall be converted into patent applications.[65] Moreover, pending applications for inventors' certificates and for patents relating to processes from which products are directly obtainable but not patentable under the LIM, but are patentable today under the LPPI, may be converted into patent

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[60] See LPPI *supra* note 31 art. 62.

[61] Id. Arts. 70-77. Compulsory licensure shall not be exclusive. Id. Art. 76. *Compare* LIM *supra* note 3 arts. 50-53. The provisions for granting compulsory licenses for the lack of exploitation of a patent were drafted in accordance with the Paris Convention. (See Paris Convention *supra* note 30 art. 5.) However, LPPI article 70-77 will need amendments in order to be in tune with article 1709:10 of NAFTA.

[62] See LPPI *supra* note 39 art. 1709:11.

[63] See LPPI *supra* note 31 art. 73.

[64] The following were protected under the defective inventor's certificate. **(i)** inventions related to nuclear energy and safety, including previous authorization of the Atomic Energy and Safeguard Commission; **(ii)** methods of preparing pharmaceutical compounds and preparations; **(iii)** methods of preparing veterinary compounds and preparations; **(iv)** methods of preparing food compositions for humans and animals; **(v)** methods of preparing fertilizers; and **(vi)** methods of preparing pesticides, herbicides, fungicides, weedkillers or other products with a biological action. See LIM *supra* note 3 art. 65.

[65] See LPPI *supra* note 31 art. 9-10 transitories.

applications for said products, and the filing dates or recognized priority dates may be retained, provided that the following conditions are fulfilled: **(i)** conversion must be proposed to the Ministry in writing by applicants for inventors' certificate or patent application within 12 months following the effective date of the LPPI; **(ii)** applicants must have patented the product or filed a patent application for said product in any country party to the PCT;[66] **(iii)** the publication of such patent application in the Gazette shall occur on the closest date after 18 months following that on which the conversion was proposed; and iv) patents granted under these provisions shall have a term of 20 years from the filing date of the applications for inventors' certificate or patent for a process.[67]

Since Mexico is not a party to the PCT, we look to the Paris Convention which is national law in Mexico and which states that priority shall be requested within the 12 months following the date of the presentation of the first application.[68]

INVALIDITY, EXPIRATION AND LAPSE OF PATENTS AND REGISTRATIONS

The patent or registration shall be invalid in the following cases: **(i)** when it is granted in violation of the provisions on the requirements and conditions se forth in the LPPI as to novelty and patentability; **(ii)** when such grant covers two or more inventions that should have been granted in a single patent and, in that case, the patent or registration shall be valid in respect of the first claim concerning the invention, the first utility model or the first industrial design, as the case may be; **(iii)** when abandonment of the application occurs in the course of processing; and **(iv)** when the grant has been flawed by serious error or negligence.[69] Because of the vagueness and abstractness of the phrase "serious error or negligence," such action remains subject to the discretion of the Ministry, which does not appear o be justified.[70]

Actions seeking invalidation shall be brought within a period of five years from the date on which the publication of the patent or registration in the Gazette becomes effective.[71] The lapse of nullity provided by the LPPI is a serious mistake, since it cannot justify that the passage of time validates a patent that may be null and void because it is lacking novelty or patentability.[72]

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[66] Patent applications filed prior to the effective date of the LPPI in any of the countries party to the Pct Shall Keep the priority dates of the first applications filed in any such country, provided that: **(i)** the application for the grant of a patent for the inventions concerned is filed with the Ministry by the first patent applicant within 12 months following the effective date of the LPPI; **(ii)** the patent applicant provides information to the Ministry verifying that he has filed the patent application in one of the countries part to the PCT or, where applicable, that the corresponding patent has been granted; or **(iii)** no one else in Mexico has previously tried to patent the process. The validity of patents granted under these grounds shall end on the same date as they do in the country where the first application was filed. But under no circumstances shall it exceed 20 years from the filing date of the patent application in Mexico. Id. Art. 12 transitory. *Compare* LIM *supra* note 3 art. 5 (an invention loses its novelty if it has been used or published in any form in Mexico or in any country before of the date of presentation of the application in Mexico.).

[67] See LPPI *supra* note 31 arts. 10-11 transitories.

[68] See The Paris Convention *supra* note 30 art. 4.

[69] Serious error or negligence is the only cause that was added, since the others were contemplated in the LIM. See LIM *supra* note 3 ART. 59.

[70] See David Rangel Medina. *El Nuevo Marco Legal sobre la Protección de la Propiedad Industrial en Mexico [The New Industrial Property Legal Framework in Mexico],* 1 El Foro 288, 297 (1991).

[71] See LPPI *supra* note 31 art. 78.

[72] See Soni *supra* note 52 at 375.

Patents shall lapse under the following circumstances: **(i)** on expiration of their term, **(ii)** when the fees to which they are subject are not paid,[73] and **(iii)** on expiration of a period of two years following the date of grant of the first compulsory license if the patent owner has not proved the working thereof or explained the reasons why it does not work.[74]

UTILITY MODELS

Protection of the utility models was not contemplated in the repealed LIM. The registration of utility models shall be for a term of 10 years, which shall be nonrenewable and shall be counted from the filing date of the application.[75] The LPPI defines utility models as objects, utensils, applicances or tools which, as a result of a modification in their arrangement, configuration, structure or form, offer a different function with respect to their component parts or advantages with respect to their use.[76] This definition is designed "to induce industrial innovation among smaller companies and individuals lacking the research and development resources that are frequently instrumental in developing patentable inventions."[77]

In order to determine the novelty of utility models, only the technology used in Mexico is considered.[78] This provision is a serious mistake since it will result in an unwarranted restriction that could prevent the free import to or manufacture in Mexico of utility models that may be publicly available in the rest of the world.[79]

The patent's rule set forth in the LPPI shall apply as appropriate to the processing of a utility model registration, with the exception of article 45, 51-55.[80]

If it is certain that the LIM did not provide protection for utility models, it is also no less certain that neither the LIM nor the LPPI requires the concept of "intense creative process" in order to protect an invention under patent, since the inclusion of utility models does not appear to be justified.[81]

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[73] The granting o patents in Mexico is subject to an annual fee during January of each year, independent of their date of grant. See Federal Rights Law *supra* note 49 art. 4 paragraph 5. A six-month grace period is granted following the time limit above mentioned. (See LPPI *supra* note 31 art. 80 (ii). See *also* LIM Regulation *supra* note 16 art. 54). Patents or registrations that have lapsed may be reinstated provided that the request is filed within six months following the grace period referred to above. See LPPI *supra* note 31 art.

[74] See LPPI *supra* note 31 art. 73. This cause was not included in the LIM.

[75] Id. Art. 29.

[76] Id. Art. 28

[77] Roberto Villareal, *The New Mexican Industrial Property Law,* at 15-16; 15-16; address at the Mexico Business Seminar, Dallas, Texas (Oct. 10, 1991). Cited by Manzero et al., *supra* note 8 at 37.

[78] See LPPI *supra* note 31 art. 12 (ii).

[79] See Soni *supra* note 52 at 376.

[80] See LPPI *supra* note 31 art. 30.

[81] See Soni *supra* note 52 at 376-377.

INDUSTRIAL DESIGNS

Industrial designs have a nonrenewable term of 15 years from the date of submission of the application.[82] They include **(i)** two-dimensional industrial designs, which are any combination of shapes, lines or colors incorporated in an industrial product for ornamentation purposes and which give it a special appearance of its own and **(ii)** any three-dimensional shape that serves as a model or pattern for the manufacture of an industrial product, given it a special appearance of its own and **(iii)** any three-dimensional shape that serves as a model or pattern for the manufacture of an industrial product, giving it a special appearance that does not involve any technical effects.[83] The use of industrial designs and the limitation of the rights of utility models granted by registration shall be governed by the patent's provisions, with the exception of article 45 and 51-55.[84] Moreover, the LPPI repeats the same mistake and qualifies the novelty of industrial designs, taking only into consideration the technology available in Mexico.[85]

CONVERSION OF APPLICATION

The applicant may convert a patent application into the registration of a utility model or industrial design and vice versa when it appears from the contents of the application that they are inconsistent with the title of protection applied for.[86]

INFRINGEMENTS

The underlying concern among foreign investors and technology holders where Mexico is concerned has been "whether the enforcement measures provided for in the [**LPPI**] will truly be efficiently and effectively implemented. Not only is there concern with respect to whether the claims will be handled expeditiously by the relevant tribunals, but also whether sufficient monies will be allocated to fund the efforts of the infringements. Ultimately, Mexico's success in attracting foreign investment and technology may be determined by these types of enforcement issues, for in a free-market economy these assets will be attracted only if investors believe that their technologies will be truly protected in Mexico.[87]

In response to the concern pointed out above, one of the most outstanding aspects of the **LPPI** is the regulation of new kinds of administrative infringements and criminal offenses, as well as the attempt to make the procedure for the prosecution of criminal offenses more expeditious within the Attorney General's Office.

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[82] See LPPI *supra* note 31 art. 36. The protection term was increased since the LIM established only seven years. See LIM *supra* note 3 art. 81.
[83] See LPPI *supra* note 31 art. 32.
[84] Id. Arts. 36-37.
[85] Id. Art. 31.
[86] The applicant may convert the application only within three months following the filing date or within three months following the date on which the Ministry requires him to make the conversion, provided that the application has not been abandoned. Id. Art. 49.
[87] See John B. McKnight & Carlos Müggenburg R:V. *Industrial Property and Copyright Laws: Another Step Toward Linkage with a Global Economy,* 20 Int'l Bus. L. 573, 578 (1992).

ADMINISTRATIVE INFRINGEMENTS

Inspection and seizure of infringing products and the temporary of permanent shutdown of the business are permitted.[88] The following are considered administrative infringements: **(i)** engaging in acts contrary to proper practice and custom in industry, commerce and services which amount to unfair competition and relate to the subject matter regulated by the **LPPI**; **(ii)** causing to appear as patented products goods that are not and if the patent has lapsed or been declared invalid, there shall be infringement one year following the date of lapse or, where applicable, the date on which the declaration of invalidity became effective; and (iii) all other violations of the provisions of the **LPPI** that do not constitute offenses.[89]

CRIMINAL INFRINGEMENTS.

The following infractions are felonies: **(i)** manufacturing or producing products covered by a patent or utility model registration without the consent of the owner thereof or without the appropriate license; **(ii)** offering for sale or placing in circulation products covered by a patent or by utility model registration in the knowledge that they were manufactured or produced without the consent of the owner of the patent or registration or without the appropriate license; **(iii)** using patented processes without the consent of the owner of the patent or without the relevant license; **(iv)** offering for sale or bringing into circulation products that are the result of the use of patented processes knowing that said processes were used without the consent of the owner of the patent or of the licensed user; and **(v)** reproducing industrial designs protected by registration without the consent of the owner thereof, or without the appropriate license.[90]

ENFORCEMENT.

The strongest possible legal protection against copying or imitation is now available not only under the LPPI for patents, utility models, industrial designs, trade secrets, marks, trade names, advertising slogans and appellations of origin,[91] but also in the whole Mexican legal system which combats illegal and unfair competition where intellectual property rights are concerned. These include **(i)** increased penalties, criminal and administrative sanctions of intellectual property rights have been increased;[92] **(ii)** independent of the administrative penalty

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[88] See LPPI *supra* note 31 arts. 203, 209. In order to levy a fine or close an infractor's establishment because of administrative infringements, a claim must be filed. Upon the petition or order of an interested party, the Ministry may conduct an investigation into the allegations. Id. Art. 215. See *also* LIM Regulation *supra* note 16 art. 125.

[89] See LPPI *supra* note 31 art. 213 (I-ii), (ix).

[90] Id. Art. 223 (i-v).

[91] See Villareal *supra* note 32 at 436.

[92] Administrative offenses will be punished with **(i)** a fine of up to the amount of 10,000 days of the general minimum salary payable in the Federal District; **(ii)** an additional fine of up to 500 days of the general minimum salry payable in the Federal District for each day that the infringement persists; **(iii)** temporary closure for up to 90 days; **(iv)** permanent closure; and **(v)** administrative detention for up to 36 hours. In the event of a second or subsequent offense, the fines previously imposed shall be doubled, but the amount thereof shall not exceed three times the applicable maximum se forth in article 214 of the LPPI. See LPPI *supra* note 31 arts. 214, 218. Imprisonment for two to six years and a fine corresponding to 100 to 10,000 days of the geneal minimum wage payable in the Federal infringement section, with the exception of those provided for in paragraphs X and XI, for which the sanctions shall be imprisonment for six months to four years and a fine amounting 10 55,000 days of the general minimum wage payable in the Federal District. Id. Art. 224.

and exercise of criminal action, a person harmed may sue the infringe for payment of damages and loss of profit by reason of the fault or felony;[93] **(iii)** inspections on demand; and **(iv)** in-depth investigations. At the request of interested parties, inspections are performed when counterfeited goods are suspected. All counterfeits are immediately confiscated and the facility is closed down if counterfeits account for more than 30 percent of the merchandise inspected.[94] During the course of examining complaints, in-depth investigations are conducted into infringements of patent, trademarks, industrial design, copyright and other intellectual property rights.[95]

The key thrust for **NAFTA** is to provide for equitable remedies similar to injunctions granted by United States Courts. Therefore, immediate equitable relief from the violation fo intellectual property rights (IPRs) plays a key role.[96]

NAFTA established provisional measures "to prevent and infringement of any [IPRs], and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance and to preserve relevant evidence in regard to the alleged infringement."[97]

In Mexico, the Federal Code of Civil Procedure and the Federal Code of Criminal Procedure establish provisional measures; however, for a better understanding the LPPI will need implementation of provisional measures adopted in **NAFTA**.[98]

NAFTA countries shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those se out in article 1716.[99] The LPPI provides in article 211 only administrative precautionary measures and confiscation of the products with which such infringement or offenses were presumably committed. The LPPI is not as specific as article 1716 is for the

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[93] Id. Art. 226.
[94] Id. Art. 203, 211. See also the LIM Regulation *supra* note 16 art. 74.
[95] See LPPI *supra* note 31 art. 222.
[96] It is questionable whether Mexican legal system injunctions are provided since in Mexico the *amparo* suit could grant an immediate equitable relief. Nevertheless, many United States intellectual property writers believe that injunctive relief is not available in Mexico. Bereskin said that, "It is not clear that Mexican [intellectual property] law provides for the kind of injunctive relief contemplated in NAFTA." See Daniel R. Bereskin. *A Comparison of the Trademark Provision of NAFTA and TRIPs,* 83 Trademark Rep. 1, 16 (1993). See also Sean McMillan, *Comments on the Current Status of Intellectual and Industrial Property Regulation in Mexico,* 1 U.S.-Mex. L.J. 57, 58 (1993) (the only remedies in Mexico for a breach of the LPPI or the implementing laws required by NAFTA will be an action for damages or administrative or criminal proceedings). "Mexican tribunals have historically refused to grant requests for pre-trial equitable remedies due to their limited stated authority to do so, the imposition on the injured party of unrealistic conditions to the granting of such requests and a general discomfort with equitable forms of relief." See McKnight & Müggenburg, *supra* note 87 at 578. the emphasis accorded to the injunctive relief in NAFTA will be a development in Mexico. "It is hoped that if NAFTA is adopted the Mexican implementing legislation and courts will carry its provisions into effect." See Manzero et al., *supra* note 8 at 42.
[97] See NAFTA *supra* note 39 art. 1716:1.
[98] See Mex. Código Federal de Procedimientos Civiles, arts. 384-399, and Código Federal de Procedimientos Penales, arts. 123, 181-182.
[99] See NAFTA *supra* note 39 art. 1716:8.

performance of such precautionary measures. Hence, implementation is needed in order to withdraw any analogous interpretation by the Mexican administrative authorities.

CONCLUSION

The improvement of the legal regime affording protection to industrial property in Mexico has been motivated by the national necessity to attract foreign capital to adapt to the present increasingly interdependent, international production and trade order and also by the geographical proximity to the United States. These have been made so as to put Mexican legislation into line not only with NAFTA but also with the rest of the world.

Mexico has one of the most open-market economies in the world which without a doubt has created a positive investment environment; therefore, these changes offer opportunities to foreign companies and investors.

Discretion granted to the Ministry, bureaucratic system for registration and numerous grounds for denial of registration, *inter alia*, have been abolished. Instead, opening of the inventions that can be patented, the new term of the patens, freedom to license without government intervention, a new institute of industrial property, complete respect for international treaties and further standards se forth in the whole Mexican legal system are clearly evidence that the patent legal system in Mexico has been liberalized, almost in an absolute manner which makes it comparable with the industrialized world's patent legal system.

The LPPI is part of Mexico's trade opening and, as it has been established, is generally consistent with NAFTA's patent section. However, not only the publication of the new LPPI Regulation is needed to contribute to a better application and understanding of the LPPI, but also further implementation as described above is expect during the following months. However, in the event that NAFTA is rejected, Mexico will continue to eliminate laws and regulations which impede growth since Mexico has learned from its abolished protectionist policy.