

seRepublic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2672



Introduced by Representative Hon. Christopher “Toff” V.P. de Venecia

AN ACT
AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE
KNOWN AS “THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”,
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Section 13, Article XIV of The 1987 Philippine Constitution provides that the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.

Anent to such State’s duty is to protect, secure and promote the intellectual property rights of the people, and to recognize the vital role that an efficient and balanced intellectual property system plays in the economic, technological and sociocultural development of a country.

This bill amending the Intellectual Property Code is a result of a series of discussions in the 18th Congress, hoping to strengthen the powers and capacity of the IPOPHL in order to properly provide better assistance to its stakeholders. The amendments seek to respond to the advances in technology since the last amendment of the IP Code, to adopt some of the current best practices in the international community, and to fortify the efforts of our government against piracy and counterfeiting.

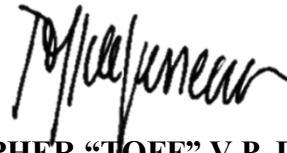
The amendments also recognize the role of creativity and innovation as important factors and drivers of economic growth. By protecting intellectual property rights, individuals who innovate and use their creativity and skills are properly rewarded with protection over these rights.

As a summary, some of the salient amendments include:

- Recognition of non-visible marks and certification marks
- Recognition of extended collective licenses
- Definition and inclusion of orphan works as protected copyright work

- Transferring back the registration and deposit function to the IPOPHL from the Supreme Court and the National Library
- Balancing of rights in commissioned works, specifically in photographs, films and paintings
- Giving the IPOPHL the power to take down infringing materials
- Increased criminal and civil penalties.

In line with all of these, the passage of this bill is earnestly sought.



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Fourth District, Pangasinan

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Be it enacted by the Senate and House of Representatives of the Philippines, in Congress assembled:

SECTION 1. Section 5 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines, as amended by Republic Acts Nos. 9150, 9502 and 10372 (“IP Code”), is hereby amended to read as follows:

*"Sec. 5.1 Function of the Intellectual Property Office **OF THE PHILIPPINES***
(IPOP~~HL~~)

THE INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES IS
MANDATED to administer and implement the State Policies declared in this Act, [there is hereby created the Intellectual Property Office (IPO) which shall have] **HAVING** the following functions:

- a. Examine applications **AND** [for] grant [of] letters patent for inventions and register utility models , [and] industrial designs , **LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS, TRADEMARKS AND OTHER MARKS OF OWNERSHIP; (SEC. 5.1(A.B.), R.A. NO. 8293A)**”
- b. **PROVIDE PROTECTION FOR GEOGRAPHICAL INDICATIONS** [Examine application for the registration of marks, geographic indication, integrated circuits;] (N)
- c. Register technology transfer arrangements and settle disputes **ON PAYMENTS** involving **THE SAME** [technology transfer payments covered by the provisions of Part II, Chapter IX on Voluntary Licensing] and develop and implement strategies to promote and facilitate technology transfer; **(SEC. 5.1.(C), R.A. NO. 8293A)**

- d. **PROMOTE THE USE OF COPYRIGHT AND RELATED RIGHTS AS A TOOL TO FOSTER A CULTURE OF CREATIVITY AND RESPECT FOR ARTISTIC CREATION; (N)**
- e. Promote the use of patent information as a tool for **POLICY MAKING AND** technology development (**SEC. 5.1.(D), R.A. NO. 8293A**)
- f. Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered; (**SEC. 5.1.(E), R.A. NO. 8293A**)
- g. Administratively adjudicate **DISPUTES INVOLVING** [contested proceedings affecting] intellectual property rights; [and] (**SEC. 5.1.(F), R.A. NO. 8293A**)
- h. **UNDERTAKE ENFORCEMENT FUNCTIONS SUPPORTED BY CONCERNED AGENCIES; (N)**
- i. Coordinate with **AND ENTER INTO PARTNERSHIPS WITH** other government agencies, **INSTITUTIONS**, and the private sector efforts to formulate and implement plans and policies to strengthen the **CREATION, PROMOTION, UTILIZATION, AND ENFORCEMENT** of intellectual property rights in the country; (**SEC. 5.1.(G), R.A. NO. 8293A**)
- j. **SECURE AND RECEIVE BILATERAL AND INTERNATIONAL GRANTS AND ENDOWMENTS TO SUPPORT ITS PROGRAMS/PROJECTS; (N) AND**
- k. **FORMULATE POLICIES TO PROMOTE CREATIVITY, INNOVATION, AND RESPECT FOR INTELLECTUAL PROPERTY. (N)**

5.2. xxx

5.3. THE OFFICE SHALL HAVE THE AUTHORITY TO ESTABLISH AND COLLECT FEES AND OTHER CHARGES IN THE EXERCISE OF ITS FUNCTIONS AND RENDERING OF SERVICES INCLUDING THE HOLDING OF TRAININGS AND SEMINARS. IN RELATION TO AND IN THE PERFORMANCE OF ITS FUNCTIONS AND PROMOTION OF INTELLECTUAL PROPERTY, THE OFFICE SHALL HAVE THE AUTHORITY TO SELL EDUCATIONAL AND PROMOTIONAL MATERIALS, AND IMPORT AND ACCEPT DONATIONS CONSISTING OF EQUIPMENT OR SIMILAR ITEMS TO BE EXCLUSIVELY USED FOR OFFICIAL PURPOSES

5.4. THE OFFICE SHALL PROMULGATE RULES AND PROCEDURES, INCLUDING REASONABLE TIMELINES CONSISTENT WITH INTERNATIONAL AGREEMENTS AND BEST PRACTICES, AND COMMENSURATE TO THE EXTREMELY COMPLICATED AND EXCEPTIONALLY TECHNICAL FIELD OF INTELLECTUAL PROPERTY. THESE RULES OF PROCEDURE INCLUDE THE GRANT OF LETTERS PATENT, REGISTRATION OF UTILITY MODELS, INDUSTRIAL DESIGNS, LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS, MARKS OF OWNERSHIP, THE ADJUDICATION OF INTELLECTUAL PROPERTY DISPUTES, AND OTHER SIMILAR OR RELATED SERVICES. (N)

SEC. 2. The Title of Section 6 of the IP Code is hereby amended to read as follows:

“SEC. 6. *The Organizational Structure of the IPOPHL*”

SEC. 3. Section 6.2. of the IP Code is hereby amended to read as follows:

“6.2 The Office shall be divided into seven (7) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

- a. The Bureau of Patents;
- b. The Bureau of Trademarks;
- c. The Bureau of Legal Affairs
- d. The **BUREAU OF INNOVATION AND BUSINESS DEVELOPMENT** [Documentation, Information and Technology Transfer Bureau];
- e. The [Management] Information **TECHNOLOGY MANAGEMENT SERVICE** [System and EDP Bureau]
- f. The **FINANCE**, Administrative [, Financial and Personnel] and **HUMAN RESOURCE DEVELOPMENT** Services [Bureau]
- g. The Bureau of Copyright and [Other] Related Rights

SEC. 4. Section 7 of the IP Code is hereby amended to read as follows:

“SEC. 7. *The OFFICE OF THE Director General and Deputies Director General.*

[7.4] **7.1 COMPOSITION.** – The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff, and such Offices and Services that the Director General will set up to support **THE PLANS AND PROGRAMS** [directly the Office] of the Director General, **INCLUDING BUT NOT LIMITED TO THE STRATEGY MANAGEMENT AND PLANNING; LEARNING ENVIRONMENT, ACCREDITATION AND RESEARCH NETWORK; INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AND COORDINATION; INTELLECTUAL PROPERTY FIELD OPERATIONS; APPEALS AND LEGAL; POLICY AND INTERNATIONAL AFFAIRS; AND INTERNAL AUDIT AND QUALITY MANAGEMENT.** (SEC. 7.4, R.A. NO. 8293A)

[7.1] **7.2. POWERS AND Functions.** – The Director General shall exercise the following powers and functions:

- a. Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement **ITS MANDATES**, [the] objectives, plans, programs and projects; **AND THE RECOGNITION OF ATTORNEYS, AGENTS, OR OTHER PERSONS REPRESENTING APPLICANTS OR OTHER PARTIES BEFORE IT.** [of the Office: Provided, that i] In the exercise of the authority to propose policies and standards in relation to the following:
 1. the effective, efficient and economical operations of the Office requiring statutory enactment;

2. coordination with other agencies of government in relation to the enforcement of intellectual property rights; **AND**
3. [the recognition of of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4)] the establishment of fees for the filing and processing of an application for a patent, **AND REGISTRATION OF** utility model or industrial design, **LAYOUT-DESIGN (TOPOGRAPHY OF AN INTEGRATED CIRCUIT**, or mark or a collective mark [, geographic indication] and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry; **[SEC. 7.1.(A), R.A. NO. 8293A]**

b. Exercise

1. **EXCLUSIVE ORIGINAL JURISDICTION OVER PETITIONS FOR THE GRANT OF COMPULSORY LICENSES OR SPECIAL COMPULSORY LICENSES. THE DECISION OF THE OFFICE OF THE DIRECTOR GENERAL OVER COMPULSORY LICENSING CASES SHALL BE APPEALABLE TO THE COURT OF APPEALS IN ACCORDANCE WITH THE RULES OF COURT;**
2. Exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, [the] Director of Patents, [the] Director of Trademarks, [the] Director of Copyright and [Other] Related Rights, and [the] Director of **INNOVATION AND BUSINESS DEVELOPMENT IN THE PERFORMANCE OF THEIR QUASI-JUDICIAL FUNCTIONS.**

The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the **DIRECTOR OF LEGAL AFFAIRS**, Director of Patents, [the] Director of Trademarks, and [the] Director of Copyright and [Other] Related Rights shall be appealable to the Court of Appeals in accordance with the Rules of Court[.]; **PROVIDED, THAT** [and those in respect of] the decision of the Director of [Documentation, Information and Technology Transfer Bureau] **INNOVATION AND BUSINESS DEVELOPMENT ON TECHNOLOGY TRANSFER ARRANGEMENTS** shall be appealable to the Secretary of Trade and Industry; **(SEC. 7.1.(B), R.A. NO. 8293A)**

- c. Undertake enforcement functions supported by concerned agencies such as: [the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Optical Media Board, and the local government units, among others;]
 1. **CONDUCT OF VISITS DURING REASONABLE HOURS TO ESTABLISHMENTS AND BUSINESSES BASED ON REPORT OR INFORMATION BY OWNER(S) OR HOLDER(S) OF THE INTELLECTUAL PROPERTY RIGHTS RECEIVED BY THE**

OFFICE, OF ACTIVITIES SUSPECTED TO BE IN VIOLATION OF THIS ACT AND ISSUE PROVISIONAL OR FINAL CONFISCATION ORDERS AGAINST THE COUNTERFEIT AND PIRATED GOODS IN ACCORDANCE WITH LAW;

- 2. ISSUANCE OF PROVISIONAL AND FINAL TAKE DOWN ORDERS OR CEASE-AND-DESIST ORDERS TO THE INTERNET SERVICE PROVIDERS, DOMAIN NAME REGISTRIES AND REGISTRARS, WEBSITE OWNERS, ONLINE INTERMEDIARIES, ONLINE PLATFORMS, SOCIAL MEDIA PLATFORMS, OR ANY SIMILAR MEDIUM AS A COMPONENT OF INJUNCTIVE RELIEF OR AS A RELIEF GRANTED AND IN COORDINATION WITH THE APPROPRIATE AGENCY, BODY, OR INTERMEDIARY SERVICE PROVIDER; AND TO ORDER PROVISIONAL REMEDIES TO ADDRESS ANY ALLEGED VIOLATION OF INTELLECTUAL PROPERTY RIGHTS; AND**

 - 3. DIRECTIVE TO OWNER OF THE INTERNET SERVICE PROVIDES, DOMAIN NAME REGISTRIES AND REGISTRARS, WEBSITE OWNERS, ONLINE INTERMEDIARIES, ONLINE PLATFORMS, SOCIAL MEDIA PLATFORMS, OR ANY SIMILAR MEDIUM TO SPECIFICALLY COMPLY WITH THE PROVISIONS OF THIS CODE. (N)**
- d. **THE POWER TO HOLD IN CONTEMPT ALL THOSE WHO DISREGARD ORDERS OR WRITS ISSUED IN THE EXERCISE OF THE POWERS AND FUNCTIONS PROVIDED IN THIS SUBSECTION** [Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this Act based on report, information or complaint received by the office; and (N)
- e. Such other functions in furtherance of [protecting IP rights and] **THE** objectives of this Act.

[7.2] **7.3 Qualifications.** – x x x

[7.3] **7.4. Term of Office** – The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once [: Provided, That the first Director General shall have a first term of seven (7) years]. Appointment to any vacancy shall be only for the unexpired term of the predecessor. **(SEC. 7.3., R.A. NO. 8293A)**”

SEC. 5. Four new sections, specifically Sections 7A, 7B, 7C, and 7D are hereby inserted after Section 7 of the IP Code, to read as follows:

“SEC. 7A. *STRATEGY MANAGEMENT AND PLANNING-*

THE STRATEGY MANAGEMENT AND PLANNING UNDER THE OFFICE OF THE DIRECTOR GENERAL SHALL HAVE THE FOLLOWING FUNCTIONS:

- a. PROVIDE EFFICIENT AND EFFECTIVE SERVICES RELATED TO THE FORMULATION OF DATA-DRIVEN PLANS AND PROGRAMS, MONITORING OF ORGANIZATIONAL PERFORMANCE, AND REVIEW OF STRATEGIC PRIORITIES;**
- b. DRIVE IPOPHL’S STRATEGIC PLANNING PROCESS BY ENHANCING ITS KNOWLEDGE OF THE DRIVING FORCES IN ITS OPERATING ENVIRONMENT; AND**
- c. IDENTIFY AND DEVELOP FUTURE-READY CAPABILITIES TO IMPROVE IPOPHL’S WORK.**

SEC. 7B. *LEARNING ENVIRONMENT, ACCREDITATION AND RESEARCH NETWORK.* – THE LEARNING AND RESEARCH NETWORK ON INTELLECTUAL PROPERTY UNDER THE OFFICE OF THE DIRECTOR GENERAL SHALL HAVE THE FOLLOWING FUNCTIONS:

- a. SUPPORT THE AGENT ACCREDITATION PROCESS OF THE OFFICE BY FACILITATING OR CONDUCTING THE ACCREDITATION TRAINING, EXAMINATION, REGISTRATION, AND OTHER SUPPORTING ACTIVITIES TO ACCREDIT AND REGISTER INTELLECTUAL PROPERTY LAWYERS, AGENTS, AND REPRESENTATIVES;**
- b. BUILD HIGH-LEVEL UNDERSTANDING, COMPETENCE AND EXPERTISE IN THE FIELDS OF INTELLECTUAL PROPERTY AND OTHER RELATED AREAS THROUGH THE CONDUCT OF CERTIFICATION PROGRAMMES, ADVANCED COURSES, LEARNING TRACKS AND CONTINUING PROFESSIONAL DEVELOPMENT PROGRAMS AND OTHER SIMILAR ACTIVITIES;**
- c. ASSIST AND SUPPORT THE RESEARCH INITIATIVES AND CAPACITY BUILDING PROGRAMS OF BUREAUS AND OFFICES IN RELATION TO LEARNING MANAGEMENT AND EVALUATION PROCESSES;**
- d. SUPPORT AND ESTABLISH THE CREATION OF SCIENTIFIC, INTERDISCIPLINARY, EVIDENCE BASED AND OTHER RELATED RESEARCH AND STUDIES ON INTELLECTUAL PROPERTY AND RELATED MATTERS THROUGH THE CONDUCT OF CONFERENCES, CONVENTIONS, AND OTHER SIMILAR ACTIVITIES ON RESEARCH;**
- e. ENHANCE AND INTEGRATE INTELLECTUAL PROPERTY IN THE LEARNING SYSTEM OF THE COUNTRY THROUGH THE**

ESTABLISHMENT OF PARTNERSHIPS AND COOPERATION WITH LOCAL OR FOREIGN EDUCATIONAL AND LEARNING INSTITUTIONS, GOVERNMENT AGENCIES, AND OTHER PROFESSIONAL DEVELOPMENT ORGANIZATIONS; AND

f. ENRICH AND EXPAND THE COLLECTION OF INTELLECTUAL PROPERTY AND RELATED LEARNING MATERIALS KNOWLEDGE AND RESEARCH RESOURCES, AND PUBLISHING MATERIALS SUCH AS JOURNALS, BOOKS AND OTHER SIMILAR PUBLICATIONS. (N)

7C. THE INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AND COORDINATION. –THE INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AND COORDINATION UNDER THE OFFICE OF THE DIRECTOR GENERAL SHALL HAVE THE FOLLOWING POWERS AND FUNCTIONS, SUBJECT TO THE JURISDICTION OF THE BUREAU OF LEGAL AFFAIRS:

1. EXERCISE JURISDICTION OVER ADMINISTRATIVE COMPLAINTS AGAINST COUNTERFEITING AND PIRACY WHICH COVER THE FOLLOWING:

a. ENFORCEMENT AGAINST MANUFACTURING, PRODUCTION, IMPORTATION, EXPORTATION, DISTRIBUTION, TRADING, AND OFFERING FOR SALE, INCLUDING OTHER PREPARATORY STEPS NECESSARY TO CARRY OUT THE SALE OF COUNTERFEIT AND PIRATED GOODS OR CONTENT, PROVIDED THAT THERE IS NO PENDING CASE BEFORE ANY OFFICE, TRIBUNAL, QUASI-JUDICIAL BODY, OR COURT INVOLVING THE SAME ISSUE/S OR SUBJECT MATTER.

b. ENFORCEMENT AGAINST THE SALE, OFFERING FOR SALE, DISTRIBUTION, TRADE, DISPLAY, STREAMING, BROADCASTING, AND OTHER PREPARATORY STEPS NECESSARY TO MAKE AVAILABLE COUNTERFEIT AND PIRATED GOODS OR CONTENT TO THE PUBLIC VIA ELECTRONIC, DIGITAL, OR ONLINE MEANS, PROVIDED THAT THERE IS NO PENDING CASE BEFORE ANY OFFICE, TRIBUNAL, QUASI-JUDICIAL BODY, OR COURT INVOLVING THE SAME ISSUE/S OR SUBJECT MATTER.

2. CONDUCT VISITS DURING REASONABLE HOURS TO ESTABLISHMENTS AND BUSINESSES BASED ON REPORT OR INFORMATION BY OWNER(S) OR HOLDER(S) OF THE INTELLECTUAL PROPERTY RIGHTS RECEIVED BY THE OFFICE, OF ACTIVITIES SUSPECTED TO BE IN VIOLATION OF THIS ACT;

3. UNDERTAKE ANY OR ALL OF THE FOLLOWING ENFORCEMENT ACTIONS:

a. ISSUE NOTICE/WARNING TO THE RESPONDENT/S;

b. ISSUE ADMINISTRATIVE ORDERS SUCH AS VISITORIAL ORDER ON PREMISES, CONFISCATION ORDERS AGAINST COUNTERFEIT AND PIRATED GOODS IN ACCORDANCE WITH LAW, ENFORCEMENT ORDERS, AND TAKE DOWN AND/OR BLOCKING ORDERS AGAINST WEBSITES OR ONLINE PLATFORMS IN COORDINATION WITH THE APPROPRIATE AGENCY OR INTERMEDIARY SERVICE PROVIDER;

c. IF WARRANTED, IMPOSE FINES WHICH SHALL IN NO CASE BE LESS THAN ONE HUNDRED THOUSAND PESOS (PHP 100,000) NOR MORE THAN ONE MILLION PESOS (PHP 1,000,000). IN ADDITION, AN ADDITIONAL FINE OF NOT LESS THAN FIVE THOUSAND PESOS (PHP 5,000) SHALL BE IMPOSED FOR EACH DAY OF CONTINUING VIOLATION.

d. RECOMMEND THAT THE CONCERNED LOCAL GOVERNMENT UNIT AND/OR OTHER GOVERNMENT AGENCY CANCEL LICENSES AND BUSINESS PERMITS FOR ENGAGING IN SELLING OR MAKING AVAILABLE TO THE PUBLIC COUNTERFEIT AND PIRATED GOODS OR FILE CHARGES AGAINST THE RESPONDENTS FOR VIOLATION OF THEIR RESPECTIVE LAWS, RULES OR REGULATIONS;

e. REQUEST THE CONCERNED LOCAL GOVERNMENT UNIT CONCERNED AND/OR OTHER GOVERNMENT AGENCIES TO IMPLEMENT THE DECISIONS OF THE IEO PURSUANT TO THEIR RESPECTIVE MANDATES; AND

f. SUCH OTHER ORDERS OR ACTIONS NECESSARY TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS CODE.

4. COORDINATE WITH OTHER GOVERNMENT AGENCIES AND THE PRIVATE SECTOR EFFORTS ON MATTERS RELATED TO INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT;

5. FORMULATE POLICIES AND PROGRAMS TO ENSURE ENFORCEMENT OF IPR, AND TO PREPARE AN ANNUAL REPORT ON THE ACCOMPLISHMENTS, PROGRESS, AND CHALLENGES OF IPR ENFORCEMENT IN THE COUNTRY;

6. ASSIST IN THE ENFORCEMENT OF ORDERS, WRITS, AND PROCESSES ISSUED BY THE BUREAU OF LEGAL AFFAIRS AND THE OFFICE OF THE DIRECTOR GENERAL, IF NEEDED;

7. CONDUCT MONITORING ACTIVITIES RELATED OR

RELEVANT TO INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT;

8. THE INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AND COORDINATION OFFICE SHALL EXERCISE INTER-AGENCY SPECIAL ENFORCEMENT COORDINATION FUNCTIONS; AND

9. SUCH OTHER POWERS AND FUNCTIONS AS MAY BE NECESSARY OR INCIDENTAL TO THE ATTAINMENT OF THE PURPOSES AND OBJECTIVES OF THIS ACT OR AS MAY BE ASSIGNED BY THE DIRECTOR GENERAL AND THE DEPUTY DIRECTOR GENERAL.

AS USED IN SECTION 7C, THE FOLLOWING TERMS ARE DEFINED AS FOLLOWS:

a. *COUNTERFEIT GOODS* - SHALL MEAN ANY GOODS OR MATERIALS INCLUDING PACKAGING BEARING WITHOUT AUTHORIZATION A TRADEMARK WHICH IS IDENTICAL TO A TRADEMARK VALIDLY REGISTERED WITH THE IPOPHL OR ALREADY DECLARED AS A WELL-KNOWN MARK INTERNATIONALLY AND IN THE PHILIPPINES BY A COMPETENT AUTHORITY IN RESPECT OF SUCH GOODS OR WHICH CANNOT BE DISTINGUISHED IN ITS ESSENTIAL ASPECTS FROM SUCH A TRADEMARK AND WHICH THEREBY VIOLATES THE RIGHTS OF THE OWNER OF THE TRADEMARK IN QUESTION.

b. *PIRATED GOODS* - SHALL MEAN ANY GOODS OR MATERIALS WHICH ARE MADE, PRODUCED, OR REPLICATED WITHOUT THE CONSENT OF THE RIGHT HOLDER OR PERSON DULY AUTHORIZED BY THE RIGHT HOLDER AND WHICH ARE MADE, PRODUCED, OR REPLICATED DIRECTLY OR INDIRECTLY FROM AN ARTICLE WHERE THE MAKING OF THAT COPY WOULD HAVE CONSTITUTED AN INFRINGEMENT OF COPYRIGHT OR RELATED RIGHTS. (N)

SEC. 7D. *INTELLECTUAL PROPERTY FIELD OPERATIONS*. – THE INTELLECTUAL PROPERTY FIELD OPERATIONS UNDER THE OFFICE OF THE DIRECTOR GENERAL SHALL HAVE THE FOLLOWING FUNCTIONS:

a. IMPLEMENT PROGRAMS AND RENDER INTELLECTUAL PROPERTY RELATED SERVICES TO PROMOTE THE EFFECTIVE USE AND RESPECT OF INTELLECTUAL PROPERTY, AND FOSTER AN INTELLECTUAL PROPERTY INSPIRED CULTURE OF INNOVATION AND CREATIVITY IN THE REGIONS OF THE COUNTRY;

b. DEVELOP LINKAGES AND PARTNERSHIPS WITH REGIONAL OFFICES OF OTHER GOVERNMENT AGENCIES, LOCAL

GOVERNMENT UNITS AND LOCAL ACADEMIC INSTITUTIONS TO ADVANCE INTELLECTUAL PROPERTY-FOCUSED PROGRAMS IN THE REGIONS; AND

- c. PERFORM SUCH OTHER FUNCTIONS THAT WILL PROMOTE THE MANDATE OF THE OFFICE. (N) ”**

SEC. 6. A new Section 8.4 is hereby inserted after Section 8.3 of the IP Code, to read as follows:

“8.3. x x x; and

8.4. PROVIDE OTHER ADMINISTRATIVE SUPPORT SERVICES RELATED TO THE FOREGOING AND CHARGE REASONABLE FEES THEREFOR. (SEC. 8, R.A. 8293A)”

SEC. 7. A new Section 9.3 is hereby inserted after Section 9.2 of the IP Code, to read as follows:

“9.2. x x x; AND

9.3. PROVIDE OTHER ADMINISTRATIVE SUPPORT SERVICES RELATED TO THE FOREGOING AND CHARGE REASONABLE FEES THEREFOR. (SEC. 9, R.A. NO. 8293A)

SEC. 8. Section 9A of the IP Code is hereby amended to read as follows:

“SEC. 9A. *The Bureau of Copyright and [Other] Related Rights.*- The Bureau of Copyright and [Other] Related Rights shall have the following functions:

[9A]1. Exercise original jurisdiction to resolve disputes relating to **COPYRIGHT AND RELATED RIGHTS, EXCEPT THOSE FALLING WITHIN THE JURISDICTION OF THE BUREAU OF LEGAL AFFAIRS.**

[9A.]2. x x x

3. FORMULATE AND IMPLEMENT PLANS AND PROJECTS TO PROMOTE THE USE OF COPYRIGHT AND RELATED RIGHTS AS A TOOL TO FOSTER A CULTURE OF CREATIVITY AND RESPECT FOR ARTISTIC CREATIONS; (N)

4. RECEIVE, EVALUATE AND ALLOW THE VOLUNTARY REGISTRATION AND DEPOSIT OF WORKS AS PROVIDED UNDER SECTION 191.

5. ESTABLISH AND MAINTAIN REGISTRIES OR DATABASES INVOLVING COPYRIGHT AND RELATED RIGHTS IN COORDINATION WITH OTHER GOVERNMENT AGENCIES, ENTITIES AND PRIVATE STAKEHOLDERS;

[9A.3] **6. Conduct [studies and] researches AND EDUCATION ACTIVITIES, TO ENHANCE PUBLIC AWARENESS ON COPYRIGHT AND OF FAIR USE OF WORKS; (SEC. 9A.3., R.A. 8293A)**

7. APPROVE, AFTER CAREFUL DELIBERATION AND/OR PUBLIC CONSULTATION, MATTERS CONCERNING THE RATE OR AMOUNT OF FEES AND ROYALTIES OF COLLECTIVE MANAGEMENT ORGANIZATIONS MENTIONED IN SEC. 183 OF THIS ACT; AND

[9A.4] **8. PERFORM [Provide such] other [copyright and related rights service] FUNCTIONS TO THE FOREGOING and charge reasonable fees therefor. (SEC. 9A.4, R.A. NO. 8293A)**

9A.2 THE DIRECTOR GENERAL MAY BY REGULATIONS ESTABLISH THE PROCEDURE TO GOVERN THE IMPLEMENTATION OF THIS SECTION; PROVIDED, THAT IN ALL PROCEEDINGS BEFORE THE BUREAU, THE EQUITABLE PRINCIPLES OF LACHES, ESTOPPEL AND ACQUIESCENCE, WHERE APPLICABLE, MAY BE CONSIDERED AND APPLIED; PROVIDED FURTHER, THAT IN THE EXERCISE OF ITS ADJUDICATION FUNCTION, RELEVANT PROVISIONS OF THIS ACT MAY APPLY IN SUPPLEMENTARY CHARACTER. (N)”

SEC. 9. Section 10 of the IP Code is hereby amended to read:

“ SEC. 10. The Bureau of Legal Affairs. – The Bureau of Legal Affairs shall have the following functions:

1. [Hear and decide] **ADJUDICATE:**

- a. opposition to the application for registration of **TRADEmarks AND OTHER MARKS OF OWNERSHIP;**
- b. cancellation of trademarks **AND OTHER MARKS OF OWNERSHIP;**
- c. subject to the provisions of Section 64, cancellation of patents, utility models, [and] industrial designs, **AND LAYOUT DESIGNS (TOPOGRAPHIES) OF**

INTEGRATED CIRCUITS; [and petitions for compulsory licensing of patents;

- d. **PETITION FOR DECLARATION AS TRUE AND ACTUAL INVENTOR;**
- e. **REVOCATION OF DECLARATION AS TRUE AND ACTUAL INVENTOR**
- f. **PETITION FOR DECLARATION OF OWNERSHIP OR OF HAVING THE RIGHT TO INTELLECTUAL PROPERTY; AND**
- g. **REVOCATION OF DECLARATION OF OWNERSHIP OR OF HAVING THE RIGHT TO INTELLECTUAL PROPERTY. (SEC. 10.1, R.A. NO. 8293A)**

2.

- a. Exercise original **AND EXCLUSIVE** jurisdiction in administrative complaints for violations of laws involving intellectual property rights. *Provided*, [That its jurisdiction is limited to complaints where the total damages claimed are not less than Two Hundred Thousand Pesos (Php200,00): Provided further] That availment of the provisional remedies ay be granted in accordance with the Rules of Court. The **BUREAU, AFTER NOTICE AND HEARING SHALL HAVE THE POWER TO IMPOSE FINES OF NOT LESS THAN FIVE THOUSAND PESOS (PHP 5,000) BUT NOT MORE THAN TEN THOUSAND PESOS (PHP 10,000).** [Director of Legal Affairs shall have the power to hold and punish] for [contempt] all those who disregard orders or writs issued in the cours of the proceedings, **AND/OR PROHIBITION TO PRACTICE BEFORE THE BUREAU OF LEGAL AFFAIRS, IN CASE OF REPETITION THEREOF.** [(n)] **(SEC. 10.2A, R.A. NO. 8293A)**

- b. After formal investigation, the **BUREAU** [Director of Legal Affairs] may impose one (1) or more of the following administrative penalties:
 - i. The issuance of a cease-and-desist order which shall specify the acts that the respondent shall cease and desist from and **TO** [shall] require **THE SUBMISSION OF** [him to submit] a compliance report within a reasonable time which shall be fixed in the order;
 - ii. x x x

The **BUREAU** [Director of Legal Affairs] may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking

- iii. The condemnation or seizure of products which are subject of the offense. The good seized hereunder shall be disposed of in such manner

as may be deemed appropriate by the **BUREAU** [Director of Legal Affairs] such as by **DESTRUCTION**, sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, any combination thereof, under such guidelines as **THE BUREAU** [he] may provide;

- iv. The forfeiture of paraphernalia, **MACHINES, EQUIPMENT AND** [all real and] personal properties which have been used in the **VIOLATION OF INTELLECTUAL PROPERTY RIGHTS** [commission of the offense];
- v. The imposition of administrative fines [in such amount as deemed reasonable by the Director of Legal Affairs,] which shall in no case be less than **ONE HUNDRED** [Five] thousand pesos (Php **100**[5], 000) nor more than One [hundred fifty thousand] **MILLION** pesos (Php **1,00**[5]0,000). In addition, an additional fine of not **LESS** [more] than [One] **FIVE** thousand pesos (Php 5[1],000) shall be imposed for each day of continuing violation;
- vi. The [cancellation] **SUSPENSION** of any [permit,] license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the **BUREAU** [Director of Legal Affairs] may deem reasonable which shall not exceed one (1) year;
- vii. The withholding of any [permit], license, authority, or registraion which is being secured by the respondent from the Office;
- viii. The assessment **AND AWARD** of damages, **INCLUDING SUCH PROFITS THE INFRINGER MAY HAVE MADE DUE TO SUCH INFRINGEMENT AND ADVERTISING REVENUES; AND WHEN APPROPRIATE, EXEMPLARY, NOMINAL, OR MORAL DAMAGES, ATTORNEY’S FEES, AND COSTS OF LITIGATION;**
- ix. Censure; and
- x. Other analogous penalties or sanctions (**SEC. 10.2B, R.A. NO. 8239A**)

3. **ESTABLISH AND ADMINISTER ALTERNATIVE DISPUTE RESOLUTION MECHANISMS; (N) AND**
4. **PROVIDE ASSISTANCE TO OTHER BUREAUS AND OFFICES OF THE IPOPHL, INCLUDING LEGAL REVIEW, STUDY, AND SIMILAR TASKS.**

[10.3] **10.2** The Director General may by Regulations establish the procedure to govern the implementation of this Section; **PROVIDED, THAT IN ALL PROCEEDINGS BEFORE THE BUREAU, THE EQUITABLE PRINCIPLES OF LACHES, ESTOPPEL AND ACQUIESCENCE, WHERE APPLICABLE, MAY BE CONSIDERED AND APPLIED.** ([n] SECS. 10.3 AND 235, R.A. NO. 8293A)”

SEC. 10. The old Section 11 of the IP Code on *The Documentation, Information and Technology Transfer Bureau* is hereby repealed and replaced by a new Section 11 that shall read:

“SEC. 11. THE BUREAU OF INNOVATION AND BUSINESS DEVELOPMENT –

11.1 THE BUREAU OF INNOVATION AND BUSINESS DEVELOPMENT SHALL HAVE THE FOLLOWING FUNCTIONS:

1. **FOSTER CREATIVITY, INNOVATION AND BUSINESS DEVELOPMENT SUCH AS:**
 - a. **ENCOURAGING THE UTILIZATION AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY THROUGH VARIOUS MODES IN COORDINATION AND COLLABORATION WITH OTHER GOVERNMENT AGENCIES; (N)**
 - b. **PROMOTING THE USE OF INTELLECTUAL PROPERTY INFORMATION AS A STRATEGIC TOOL TO FACILITATE THE DEVELOPMENT OF TECHNOLOGY IN THE COUNTRY; (SEC. 11.6, R.A. NO. 8293A)**
 - c. **PERFORMING PATENT SEARCH, ANALYTICS MAPPING, AND SIMILAR ACTIVITIES; (SEC. 11.5, R.A. 8293A)**
 - d. **REGISTER TECHNOLOGY TRANSFER ARRANGEMENTS; AND SETTLE DISPUTES INVOLVING TECHNOLOGY TRANSFER PAYMENTS (SEC. 11.8, R.A. 8293A)**
 - e. **ADAPT AND PACKAGE INTELLECTUAL PROPERTY INFORMATION; AND (SEC. 11.1D, R.A. 8293A)**
 - f. **PROVIDE ADVISORY SERVICES FOR THE DETERMINATION OF SEARCH PATTERNS; (SEC. 11.7, R.A. 8293A)**

2. **BUILDING PUBLIC AWARENESS ON INTELLECTUAL PROPERTY THROUGH INFORMATION DISSEMINATION AND THE CONDUCT OF SEMINARS, LECTURES, CAPACITY BUILDING EXERCISES AND OTHER SIMILAR ACTIVITIES; (SEC. 11.3, R.A. NO. 8293A) AND**
3. **ESTABLISH A UNIT OR DIVISION FOCUSING ON MARKETING OF SERVICES, ADVOCACY, AND EXTERNAL COMMUNICATIONS; (N)**

11.2 THE DIRECTOR GENERAL MAY BY REGULATIONS ESTABLISH THE PROCEDURE TO GOVERN THE IMPLEMENTATION OF THIS SECTION: PROVIDED, THAT IN ALL PROCEEDINGS BEFORE THE BUREAU, THE EQUITABLE PRINCIPLES OF LACHES, ESTOPPEL AND ACQUIESCENCE, WHERE APPLICABLE, MAY BE CONSIDERED AND APPLIED. (N)”

SEC. 11. Section 12 of the IP Code is hereby amended to read:

“SEC. 12. *The [Management] Information TECHNOLOGY MANAGEMENT Service[s and EDP Bureau].* – The [Management] Information **TECHNOLOGY MANAGEMENT** Service[s and EDP Bureau] shall:

12.1 [Conduct automation planning, research and development, testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation and the like; and] **PLAN, DEVELOP, AND IMPLEMENT INFORMATION TECHNOLOGY (IT) STRATEGIES AND POLICIES IN COLLABORATION WITH ALL OFFICES AND BUREAUS TO ENSURE THE OPTIMAL APPLICATION AND UTILIZATION OF IT RESOURCES AND SERVICES; AND (N)**

12.2. [Provide management information support and service to the Office. (n)] **DEVELOP AND MAINTAIN DATABASES, APPLICATION SYSTEMS, AND NETWORK INFRASTRUCTURE SYSTEMS TO SUPPORT ALL OFFICE AND BUREAU OPERATIONS. (N)”**

SEC. 12. Section 13 of the IP Code is hereby amended to read:

“SEC. 13. *The FINANCE, Administrative, [Financial] and Human Resource Development Service[s Bureau]*

[13.3] 13.1 The Financ[ial]E Service shall: **(SEC. 13., R.A. NO. 8293A)**

- a. Formulate and manage a financial program to ensure availability and proper utilization of funds; and
- b. Provide for an effective monitoring system of the financial operations of the Offices; [and] (**SEC. 13.3, R.A. NO. 8293A**)

[13.1] **13.2.** The Administrative Service shall:

- a. Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other [Office's] obligations **OF THE OFFICE**, [office] maintenance, **AND** proper safety and security **OF THE OFFICE, AS WELL AS** [and] other utility services; and
- b. Receive all applications filed with the Office and collect fees therefore. [; and Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and layout designs of integrated circuits registrations. (**SEC. 13.1. R.A. 8293A**)

[13.2. The Patent and Trademark Administration Services shall perform the following functions among others:

- a. Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;
- b. Collect maintenance fees, issue certified copied of documents in its custody, and perform similar other activities; and
- c. Hold in custody all the applications filed with the office, and all patent grants, certificates of registrations issued by the office, and the like.]

[13.4] **13.3.** The Human Resource Development Service shall:

- a. Design and implement human resource development plans and programs for the personnel of the Office;
- b. Provide for present and future ma power needs of the organization;
- c. Maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs; **AND**
- d. **COMPLY WITH GOVERNMENT REGULATORY REQUIREMENTS IN THE AREAS OF PERFORMANCE APPRAISAL, COMPENSATION AND BENEFITS, EMPLOYMENT RECORDS AND REPORTS. (SEC. 13.1.A, R.A. NO. 8293)”**

SEC. 13. Section 20.5 of the IP Code is hereby amended to read:

20.5. “Patent application” or “application” means an application for a patents for an invention except in Chapters XII and XIII, where application means an application for a utility model and an industrial design **OR LAYOUT-DESIGN (TOPOGRAPHY) OF INTEGRATED CIRCUIT**, respectively; [and] **(SEC. 20.5, R.A. 8293A)**

SEC. 14. A new subsection under Section 20, to be called Section 20.7, is hereby inserted after Section 20.6 of the IP Code, to read:

“20.7 “PROVISIONAL PATENT APPLICATION” REFERS TO A TEMPORARY APPLICATION FILED TO ESTABLISH AN EARLY FILING DATE AND SHALL BE REPLACED BY A PATENT APPLICATION THAT COMPLIES WITH SECTION 32.1 FILED WITHIN TWELVE (12) MONTHS FROM THE FILING DATE, OTHERWISE IT SHALL BE CONSIDERED FORFEITED. (N)”

SEC. 15. Section 24.1 of the IP Code is hereby amended to read:

“24.1 Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the intervention; **PROVIDED, THAT A PROVISIONAL APPLICATION SHALL NOT BE CONSIDERED AS PRIOR ART;** and”

SEC. 16. Section 31 of the IP Code is hereby amended to read:

“SEC. 31. *Right of Priority.* –

31.1. An application for patent filed by any person who has previously applied for the same invention in another country which by treaty, convention, or law affords similar privileges to Filipino citizens, shall be considered as filed as of the date of filing the foreign application: Provided, That:

- (a) the local application expressly claims priority;
- (b) it is filed within twelve (12) months from the date the earliest foreign application was filed; and
- (c) a certified copy of the foreign application together with an English translation is filed within six (6) months from the date of filing in the Philippines. **(SEC. 31, R.A. NO 8293A)**

31.2 THE FILING DATE OF A PROVISIONAL APPLICATION MAY BE CLAIMED AS THE PRIORITY DATE OF THE PATENT APPLICATION PROVIDED THE LATTER WAS FILED WITHIN TWELVE (12) MONTHS FROM SUCH DATE COMPLYING WITH THE REQUIREMENTS IN SECTION 32.1. (N)”

SEC. 17. Section 32 of the IP Code is hereby amended to read:

“SEC. 32. *The Application.* –

32.1 The patent application shall be in Filipino or English and shall contain the following:

- a. x x x
- b. x x x
- c. x x x
- d. **AT LEAST** one [or more] claim[s]; [and]
- e. An abstract;
- f. **PAYMENT OF REQUIRED FEES AT THE TIME OF FILING; (N) AND**
- g. **THE APPOINTMENT OF AN AGENT OR REPRESENTATIVE, IF THE APPLICANT IS NOT DOMICILED IN THE PHILIPPINES UPON WHOM NOTICE OR PROCESS FOR JUDICIAL OR ADMINISTRATIVE PROCEDURE RELATING TO THE APPLICATION FOR PATENT OR THE PATENT MAY BE SERVED. (SEC. 33, R.A. NO. 8293A)**

32.2. A PROVISIONAL PATENT APPLICATION SHALL CONTAIN THE FOLLOWING:

- A. REQUEST FORM FOR PROVISIONAL APPLICATION; (N)**
- B. PROVISIONAL DESCRIPTION OF THE INVENTION; (N)**
- C. PROVISIONAL DRAWINGS AND/OR SEQUENCE LISTINGS, IF APPLICABLE; (N)**
- D. AT LEAST ONE (1) PROVISIONAL CLAIM; (N)**
- E. PROVISIONAL ABSTRACT; (N)**
- F. PAYMENT OF REQUIRED FEES AT THE TIME OF FILING; (N) AND**
- G. THE APPOINTMENT OF AN AGENT OR REPRESENTATIVE, IF THE APPLICANT IS NOT DOMICILED IN THE PHILIPPINES UPON WHOM NOTICE OR PROCESS FOR JUDICIAL OR ADMINISTRATIVE PROCEDURE RELATING TO THE APPLICATION FOR PATENT OR THE PATENT MAY BE SERVED. (SEC. 33, R.A. NO. 8293A)**

[32.2] **32.3** No patent may be granted unless the application identifies the inventor. If the applicant is not the inventor, the Office may require him to submit said authority.”

SEC. 18. Section 33 of the IP Code is hereby amended to read as:

“SEC. 33. [*Appointment of Agent of Representative.* – An applicant who is not a resident of the Philippines must appoint and maintain a resident agent or representative in the Philippines upon whom notice or process for judicial or administrative procedure relating to the application for patent or the patent may be served. (Sec. 11, R.A. No. 165a)]
PROVISIONAL APPLICATION-

33.1 A PROVISIONAL APPLICATION MAY BE FILED TO ESTABLISH AN EARLY FILING DATE BUT SHALL BE REPLACED BY A PATENT

APPLICATION FILED WITHIN TWELVE (12) MONTHS FROM SUCH DATE COMPLYING WITH THE REQUIREMENTS IN SECTION 32.1, OTHERWISE IT SHALL BE CONSIDERED FORFEITED. A PROVISIONAL APPLICATION SHALL NOT BE EXAMINED AND PUBLISHED.

33.2 THE BENEFITS OF FILING A PROVISIONAL APPLICATION REFER ONLY TO RIGHT OF PRIORITY AND FOR ESTABLISHING NOVELTY. THE PROTECTION PERIOD REFERRED TO IN SECTION 54 SHALL BE RECKONED FROM THE FILING DATE OF THE PROVISIONAL PATENT APPLICATION. (N)”

SEC. 19. Section 41 of the IP Code is hereby amended to read:

“SEC. 41. *According a Filing Date.* – The Office shall examine whether the patent application **OR A PROVISIONAL APPLICATION** satisfies the requirements for the grant of date of filing as provided in Section 40 hereof. If the date of filing cannot be accorded, the applicant shall be given an opportunity to correct the deficiencies in accordance with the implementing Regulations. If the application does not contain all the elements indicated in Section 40, the filing date should be that date when all the elements are received. If the deficiencies are not remedied within the prescribed time limit, the application shall be considered withdrawn. [(n)] **(SEC. 41, R.A. NO. 8293A).**”

SEC. 20. Section 45 of the IP Code is hereby amended to read:

“SEC. 45. *Confidentiality Before Publication.* -

45.1. A patent application which has not yet been published, and all related documents, shall not be made available for inspection without the consent of the applicant. [(n)] **(SEC. 45, R.A. NO. 8293)**

45.2. STRICT CONFIDENTIALITY OF PROVISIONAL PATENT APPLICATION. – A PROVISIONAL PATENT APPLICATION THAT HAS COMPLIED WITH THE REQUIREMENT IN SECTIONS 43 AND 44 SHALL BE KEPT IN THE STRICTEST CONFIDENCE BY THE OFFICE AND AS SUCH, WILL NOT BE PUBLISHED IN THE IPOPHL GAZETTE OR IN ANY OTHER MEANS OF PUBLICATION. PROVISIONAL APPLICATIONS FILED THAT ARE FORFEITED SHALL BE DESTROYED AND NO RECORDS OF WHICH SHALL BE KEPT BY THE OFFICE. (N)”

SEC. 21. Section 54 of the IP Code is hereby amended to read:

“SEC. 54. *Term of Patent.* – The term of a patent shall be twenty (20) years from the filing date of the application. **FOR A PATENT WHICH WAS ORIGINALLY FILED UNDER A PROVISIONAL PATENT APPLICATION, THE PROTECTION PERIOD SHALL BE RECKONED FROM THE FILING DATE OF THE**

PROVISIONAL PATENT APPLICATION. [(Sec. 21, R.A. No. 165a)] (SEC. 54, R.A. NO. 8293A)”

SEC. 22 Section 84 of the IP Code is hereby amended to read:

“SEC. 84. *Criminal Action AND PENALTIES [for Repetition of Infringement]. –*

84.1 INDEPENDENT OF THE CIVIL AND ADMINISTRATIVE REMEDIES, PERSONS LIABLE FOR INFRINGEMENT SHALL, UPON CONVICTION, BE PUNISHED, BY IMPRISONMENT AND/OR FINE, OR BOTH, AT THE DISCRETION OF THE COURT, AS FOLLOWS:

A. PATENT INFRINGEMENT. – IN INFRINGEMENT OF INDUSTRIAL DESIGN, THE OFFENDER SHALL SUFFER IMPRISONMENT FOR A PERIOD OF NOT LESS THAN THREE (3) YEARS BUT NOT MORE THAN FIVE (5) YEARS AND/OR A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (PHP 100,000.00) BUT NOT MORE THAN THREE HUNDRED THOUSAND PESOS (PHP300,000.00)

B. REPETITION OF PATENT INFRINGEMENT. – If infringement **OF INVENTION PATENTS, UTILITY MODELS, LAYOUT OF INTEGRATED CIRCUITS** is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offender shall [without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall] suffer imprisonment for the period of not less than [six (6) months] **THREE (3) YEARS** but not more than [three (3) years] **FIVE (5) YEARS** and/or a fine of not less than [One] **FIVE** hundred thousand pesos (Php [1]500,000) but not more than [Three hundred thousand] **ONE MILLION** pesos (Php 1,[3]000,000) [at the discretion of the court. The criminal action herein provided shall prescribe in three (3) years from date of the commission of the crime]. **(SEC. 84, R.A. NO. 8293A)”**

SEC. 23 Chapter IX on “VOLUNTARY LICENSING” is hereby renamed as “INNOVATION AND LICENSING”

SEC. 24. Section 85 of the IP Code on *Voluntary License Contract* is hereby repealed and replaced with a new Section 85 to read:

“**SEC. 85. DEFINITION OF TERMS. - AS USED IN PART III:**

85.1. “BUREAU” MEANS THE BUREAU OF INNOVATION AND BUSINESS DEVELOPMENT;(N)

85.2 “COMMERCIALIZATION” AS A FORM OF UTILIZATION, REFERS TO THE PROCESS OF DERIVING ECONOMIC GAIN FROM A TECHNOLOGY, SUCH AS BUT NOT LIMITED TO THE CREATION OF A SPIN-OFF COMPANY,

OR THROUGH LICENSING, OR THE SALE OF THE TECHNOLOGY AND/OR INTELLECTUAL PROPERTY RIGHTS; (N)

85.3 “LICENCING” REFERS TO THE ACT OF ENGAGING IN A CONTRACT OR AGREEMENT WHEREIN AN INTELLECTUAL PROPERTY RIGHTS OWNER AND ANOTHER WHO IS AUTHORIZED TO USE SUCH RIGHTS IN EXCHANGE FOR AN AGREED PAYMENT, FEE, OR ROYALTY; (N)

85.4. “NEUTRAL COUNTRY” REFERS TO A COUNTRY OTHER THAN THE PHILIPPINES WITHOUT LEGAL TIES TO ANY OF THE PARTIES TO A TECHNOLOGY TRANSFER ARRANGEMENT; (N)

85.5 “UTILIZATION” REFERS TO THE USE OF INTELLECTUAL PROPERTY OR INTELLECTUAL PROPERTY RIGHTS, WHETHER OR NOT FOR COMMERCIAL USE. (N)”

SEC. 25. A new Section 85A is hereby inserted after Section 85 of the IP Code to read:

“SEC. 85A. *SUPPORTING INNOVATION.* – THE BUREAU SHALL IMPLEMENT POLICIES AND PROGRAMS TO PROMOTE AND SUPPORT INNOVATION THROUGH, BUT NOT LIMITED TO THE FOLLOWING:

85A.1. CAPACITY BUILDING ON INTELLECTUAL PROPERTY MANAGEMENT AND COMMERCIALIZATION;

85A.2. TECHNICAL ASSISTANCE ON VALUATION OF INTELLECTUAL PROPERTY;

85A.3. ASSISTANCE TO INVENTORS AND MICRO, SMALL, AND MEDIUM ENTERPRISES IN GETTING SUPPORT FOR RESEARCH AND DEVELOPMENT, MANAGEMENT, AND COMMERCIALIZATION OF THEIR INTELLECTUAL PROPERTY; AND

SEC. 26. Section 88.3 of the IP Code is amended to read:

“88.3. In the event the technology transfer arrangement shall provide for arbitration, [the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and] the venue of arbitration shall be the Philippines or any neutral country; and”

SEC. 27. Section 92 of the IP Code is hereby amended to read:

“SEC. 92. *NON-REGISTRATION WITH THE [Documentation, Information and Technology Transfer] Bureau OF INNOVATION AND BUSINESS DEVELOPMENT.* – Technology transfer arrangements that conform with the provisions of Sections [86 and]

87 **AND 88** need not be registered with the [Documentation, Information and Technology Transfer] Bureau **OF INNOVATION AND BUSINESS DEVELOPMENT**

Non-conformance with any of the provision of Sections 87 and 88, however, shall automatically render the technology transfer arrangement unenforceable, unless said technology transfer arrangement is approved and registered with the [Documentation, Information and Technology Transfer] Bureau **OF INNOVATION AND BUSINESS DEVELOPMENT** under the provisions of Section 91 on exceptional cases. **(SEC. 92, R.A. NO. 8293A)**”

SEC. 28. Section 111 of the IP Code is amended to read as:

“ SEC. 111. [*Prohibition against Filing of] Parallel Applications. –*

111.1. An applicant may [not] file two (2) applications for the same subject, one for utility model registration and the other for the grant of an invention patent whether simultaneously or consecutively

111.2 IF THE UM APPLICATION IS GRANTED REGISTRATION, A CERTIFICATE SHALL BE ISSUED TO THE APPLICANT AND IT SHALL BE PROTECTED AS A REGISTERED UM. THE INVENTION APPLICATION SHALL PROCEED SEPARATELY AND INDEPENDENTLY, UNLESS THE APPLICANT WITHDRAWS THE APPLICATION.

111.3 IF THE INVENTION APPLICATION IS GRANTED A PATENT, THE CERTIFICATE WILL BE ISSUED BUT THE APPLICANT MUST SURRENDER THE UM REGISTRATION WHICH SHALL BE DEEMED CANCELED UPON THE DATE OF GRANT OF THE PATENT UNLESS THE APPLICANT CHOOSES THE UM REGISTRATION.

111.4 THERE SHALL BE ONLY ONE PROTECTION GIVEN AND IN CASE OF INFRINGEMENT, ONLY ONE CAUSE OF ACTION SHALL BE INVOKED REGARDLESS OF THE PRESENCE OF TWO (2) APPLICATIONS.

111.5 THE PERIOD OF PROTECTION FOR UTILITY MODEL PURSUANT TO SECTION 109.3 AND INVENTION PURSUANT TO SECTION 54 SHALL APPLY ACCORDINGLY AND SHALL NOT BE VESTED CUMULATIVELY. (SEC. 59, R.A. NO. 165A) (SEC. 111, R.A. 8293A)”

SEC. 29. Section 112 (1) of the IP Code is hereby amended to read as:

“SEC. 112. *Definition of Terms –*

1. An Industrial Design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors: *Provided*, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft.

PARTS OR COMPONENTS OF SUCH PRODUCT OR HANDICRAFT MAY BE SUBJECT FOR INDUSTRIAL DESIGNS OF SUCH PRODUCT OR HANDICRAFT AS A WHOLE, PROVIDED, THAT SUCH PARTS OR COMPONENTS MEET THE REQUIREMENTS FOR PROTECTION OF INDUSTRIAL DESIGNS. (SEC. 112.1., R.A. NO. 8293A)”

SEC. 30. Sections 113 and 113.1 of the IP Code is hereby amended to read as:

“SEC. 113. [*Substantive*] *Conditions for Protection.* –

113.1 Only industrial designs that are new or **ORIGINAL** [ornamental] shall benefit from protection under this Act. **(SEC. 113.1. R.A. 8293A)”**

SEC. 31. The Title of Section 116 of the IP Code is hereby amended to read as:

“SEC. 116. **FORMAL** *Examination*”

SEC. 32. Section 121 of the IP Code is hereby amended to read as:

“SEC. 121. *Definitions.* As used in Part III, the following terms have the following meanings:

121.1 “Mark” means any [visible] sign **OR COMBINATION OF SIGNS AS MAY BE PRESCRIBED BY THE REGULATIONS**, capable of distinguishing the goods (trademark_ or services (service mark) of an enterprise and **MAY** [shall] include a stamped or marked container of goods; [(Sec. 38, R.A. No. 166a)] **(SEC. 121.1, R.A. NO. 8293A)**

121.2. x x x

121.3. x x x

121.4. x x x

121.5. x x x

121.6 x x x

121.7 x x x

121.8. “CERTIFICATION MARK” MEANS ANY SIGN, USED OR INTENDED FOR USE IN COMMERCE WITH THE OWNER’S PERMISSION BY SOMEONE OTHER THAN ITS OWNER, TO CERTIFY REGIONAL OR OTHER GEOGRAPHIC ORIGIN, MATERIAL, MODER OF MANUFACTURE, QUALITY, ACCURACY, OR OTHER CHARACTERISTICS OF SOMEONE’S

GOODS OR SERVICES, OR THAT THE WORK OR LABOR ON GOODS OR SERVICES WAS PERFORMED BY MEMBERS OF A GROUP OR OTHER ORGANIZATIONS. (N)”

SEC. 33. Section 123 of the IP Code is hereby amended to read:

“SEC. 123. *Registrability.* –

123.1 A mark cannot be registered if it:

(a) Consists **OF MATTER WHICH:**

1. **IS** immoral, deceptive or scandalous; **OR**
2. [matter, or matter which] may disparage or falsely suggest a connection with [persons] living or dead **PERSONS**, institutions, **ENTITIES**, beliefs, **CUSTOMS, VALUES**, or national symbols, **NATIONAL IDENTITY, HERITAGE** or **PATRIMONY**; **OR**
3. Brings **ANY OF THE FOREGOING** [them] into contempt, **DISRESPECT**, or disrepute; (**SEC. 123.1(A), R.A. NO. 8293A**)

(b) Consists of the flag, [or] coat of arms or other insignia of the Philippines or any of its political subdivisions, **OR OF ITS AGENCIES**, or of any foreign nation, **OR OF ANY INTERNATIONAL INTERGOVERNMENTAL ORGANIZATION**, or any simulation thereof; (**SEC. 123.1(B), R.A. NO. 8293A**)

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines during the life of **THE SURVIVING SPOUSE** [his widow], if any, except by written consent of the **LATTER** [widow]; (**SEC 123.1(C), R.A. NO. 8293A**)

(d) Is identical with a registered mark belonging to a different proprietor or to a mark with an earlier filing or priority date, in respect of [: (i)] the same goods or services, or [(ii)] closely related goods or services, or [(iii) if it] nearly resembles [such] a **REGISTERED** mark **WITH AN EARLIER FILING OR PRIORITY DATE** as to [be] likely [to] deceive or cause confusion; (**SEC. 123.1(D), R.A. NO. 8293A**)

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent **NATIONAL** authority [of the Philippines] **AS PRESCRIBED IN THE REGULATION** to be well-known internationally **OR** [and] in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services:

Provided, THAT USE OF THE MARK IN RELATION TO THOSE GOODS OR SERVICES WHICH ARE NOT SIMILAR TO THOSE WITH RESPECT TO WHICH REGISTRATION IS APPLIED FOR AND THAT THE USE OF SUCH

MARK IN THOSE GOODS AND SERVICES WOULD INDICATE A CONNECTION BETWEEN THOSE GOODS OR SERVICES, AND THE OWNER OF THE WELL-KNOWN MARK AND THAT THE INTERESTS OF THE OWNER OF THE WELL KNOWN MARK ARE LIKELY TO BE DAMAGED BY SUCH USE. PROVIDED FINALLY, that in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather[N] than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.; **(SEC.123.1 (E), R.A. 8293A)**

[(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use.]

(F) [(g)] Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services; **(SEC. 123.1(G), R.A. NO. 8293A)**

(G) [(h)] Consists exclusively of signs that are generic for the goods or services that they seek to identify; **(SEC. 123.1(H), R.A. NO. 8293A)**

(H) [(i)] Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice; **(SEC. 123.1(I), R.A. NO. 8293A)**

(I) [(j)] Consists exclusively of signs or of indications that may serv[I]e in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, **SUBJECT MATTER**, time or production of the goods or rendering of the services, or other characteristics of the goods or services, **EXCEPT WHEN THE APPLICATION IS FOR THE REGISTRATION OF A COLLECTIVE OR CERTIFICATION MARK COVERING GEOGRAPHICAL INDICATION;** **(SEC. 123.1 (J), R.A. NO. 8293A)**

(J) [(k)] Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value; **(SEC. 123.1(K), R.A. 8239A)**

(K) [(l)] Consists of color alone, unless defined by a given form; **(SEC 123.1(L), R.A. NO. 8293A) [or]**

(L) LACKS DISTINCTIVENESS; (N)

(M) IMPAIRS OR DILUTES THE DISTINCTIVENESS, OR HARMS THE REPUTATION OF A WELL-KNOWN MARK, AS DECLARED BY COMPETENT AUTHORITY, WHETHER REGISTERED OR NOT; (N) OR

(N) [(m)] Is contrary to public order [,] OR PUBLIC POLICY. [or morality.] (SEC. 123.1(M), R.A. NO. 8293A)

123.2. FOR THE PURPOSE OF DECLARING A MARK WELL-KNOWN AS PROVIDED IN PARAGRAPHS (E) AND (M), THE DIRECTOR GENERAL, BUREAU OF LEGAL AFFAIRS, DIRECTOR OF BUREAU OF TRADEMARKS AND JUDICIAL AUTHORITIES ARE CONSIDERED COMPETENT AUTHORITIES IN RELATION TO THEIR RESPECTIVE FUNCTIONS OR JURISDICTIONS. (N)

123.3. [123.2] As regards signs or devices mentioned in paragraphs (i), (k), and (l) OR THOSE WHERE THE SHAPES OF THE GOOD THEMSELVES OR PORTION THEREOF, THEIR PACKAGING, OR CONTAINERS ARE NOT NECESSITATED BY TECHNICAL FACTORS OR THOSE FACTORS ONLY AFFECT THEIR INTRINSIC VALUE, nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of in the commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for **THREE [five] (3) [5] years** before the date on which the claim of distinctiveness is made. **(SEC. 123.2, R.A. NO. 8293A)**

123.4 [123.3] The nature of the goods to which the mark is applied will not constitute an obstacle to registration. [(Sec. 4, R.A. No. 166a)] (SEC. 123.3. R.A. NO. 8293)"

SEC. 34. Section 124 of the IP Code is hereby amended to read:

"SEC. 124. Requirements of Application. –

124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

- (a) x x x
- (b) x x x
- (c) x x x
- (d) x x x
- (e) x x x
- (f) x x x
- (g) x x x
- (h) x x x

- (i) One or more reproductions of the mark **OR SERIES MARKS**, as prescribed in the Regulations;
- (j) x x x
- (k) x x x
- (l) x x x

124.2. **TO MAINTAIN THE APPLICATION OR REGISTRATION OF THE MARK, IT MUST BE USED ON GOODS OR SERVICES. FOR THIS PURPOSE,** the applicant or [the] registrant shall file a declaration of actual use of the mark with evidence to that effect [as prescribed by the Regulations] within:

- A. Three (3) years AND SIX (6) MONTHS** from the filing date of the application; (**SEC. 124.2, R.A. NO. 8293A**)
- B. ONE (1) YEAR FROM THE FIFTH ANNIVERSARY OF THE REGISTRATION;** (N)
- C. ONE (1) YEAR FROM DATE OF RENEWAL TO BE RECKONED FROM THE DATE OF RENEWAL;** (N) **AND**
- D. ONE (1) YEAR FROM THE FIFTH ANNIVERSARY OF EACH RENEWAL.** (N)

Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

124.3 x x x
124.4 x x x”

SEC. 35. Section 131 of the IP Code is amended to read:

“SEC. 131. *Priority Right.* –

131.1 An application for registration of a mark filed in the Philippines by a person referred to in Section 3, and who previously duly filed an application for registration of the same mark in one of those countries, shall be considered as filed as of the day the application was first filed in the foreign country. **PROVIDED, THAT THE APPLICATION IN THE PHILIPPINES IS FILED WITHIN SIX (6) MONTHS FROM THE DATE ON WHICH THE APPLICATION WAS FIRST FILED IN THE FOREIGN COUNTRY. (SEC. 131.1, R.A. NO. 8293A)**

132.2. [No registration of a mark in the Philippines by a person described in this section shall be granted until such mark has been registered in the country of origin of the applicant.

131.3] Nothing in this section shall entitle the owner of a registration under this section to sue for acts committed prior to the date on which his mark was registered in this country *Provided, That,* notwithstanding the foregoing, the owner of a well-known mark as defined in Section 123.1(e) of this Act, that is not registered in the Philippines, may, against an identical or confusingly similar mark, oppose its registration, or petition the cancellation

of its registration or sue for unfair competition, without prejudice to availing himself of other remedies provided for under the law.

131.3. [131.4] In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country: Provided, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority. (Sec. 37, R.A. No. 166a)”

SEC. 36. Section 145 of the IP Code is amended to read:

“SEC. 145. *Duration.* – A certificate of registration shall remain in force for ten (10) years from the date of registration. [*Provided,* That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise the mark shall be removed from the Register by the Office. **(SEC. 145. R.A. NO. 8293A)**”

IN CASE WHERE A MOTION FOR EXTENSION FOR THE PERIOD TO FILE AN OPPOSITION IS GRANTED BY THE BUREAU OF LEGAL AFFAIRS, THE MARK IS DEEMED REGISTERED THE DAY FOLLOWING THE EXPIRATION OF THE EXTENSION PERIOD. (N)

WHEN AN OPPOSITION IS FILED, A MARK SHALL BE CONSIDERED REGISTERED ON THE DATE THE DECISION OR FINAL ORDER GIVING DUE COURSE TO THE APPLICATION BECOMES FINAL AND EXECUTORY. (N)

SEC. 37. Section 151(c) of the IP Code is amended to read:

“(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years **AND SIX (6) MONTHS** or longer.”

SEC. 38. A new Section 155A is hereby inserted after Section 155 of the IP Code to read:

“SEC. 155A. SOLIDARY LIABILITY. THE FOLLOWING, WHO, FOR PROFIT OR BENEFIT, SHALL BE HELD SOLIDARILY LIABLE FOR THE FOLLOWING ACTS:

A. ONE WHO PERMITS THE USE OF THE LATTER’S PREMISES IN SELLING, OFFERING FOR SALE, MANUFACTURING, OR DISTRIBUTION OF ANY INFRINGING COUNTERFEIT OR PIRATED GOODS OR CONTENT, UNLESS,

THE LATTER CAN PROVE HAVING NO KNOWLEDGE OF SUCH FACT AND HAS NO PARTICIPATION IN THE INFRINGING ACT OF THE TENANTS;

- B. WHEN INTERNET SERVICE PROVIDERS, DOMAIN NAME REGISTRIES AND REGISTRARS, WEBSITE OWNERS, ONLINE INTERMEDIARIES, ONLINE PLATFORMS, SOCIAL MEDIA PLATFORMS, OR ANY SIMILAR MEDIUM IS USED IN SELLING, OFFERING FOR SALE, USE, OR MAKING AVAILABLE TO THE PUBLIC, ANY INFRINGING, COUNTERFEIT OR PIRATED GOODS OR CONTENT, AND THE LATTER FAILS TO EXERCISE DUE DILIGENCE IN COMPLYING WITH THE MINIMUM REQUIREMENTS SET BY LAW OR FAILS TO TAKE DOWN OR BLOCK ACCESS TO THE INFRINGING MATERIAL OR WEBSITE WITHIN A REASONABLE TIME, AS WELL AS ENFORCE ITS POLICY AGAINST INFRINGEMENT, COUNTERFEITING OR PIRACY, UNLESS, THE FORMER CAN PROVE HAVING NO KNOWLEDGE OF SUCH FACT AND HAS NO PARTICIPATION IN THE INFRINGING ACT.”(N)**

SEC. 39. Section 156.2 of the IP Code is hereby amended to read:

“156.2. On application of the complainant, the court may impound during the pendency of the action, **MATERIALS AND IMPLEMENTS PREDOMINANTLY USED IN THE ACT OF INFRINGEMENT**, sales, invoices and other document evidencing sales.”

SEC. 40. Section 167 of the IP Code is hereby amended to read:

“**SEC. 167. Collective Marks AND CERTIFICATION MARKS. –**

167.1. Subject to Subsections 167.2 and 167.3, Sections 122 to 164 and 166 shall apply to collective marks **AND CERTIFICATION MARKS**, except that references therein to “mark” shall be read as “collective mark” **OR “CERTIFICATION MARK”**.

167.2(a). An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the agreement, if any, governing the use of the collective mark. **AN APPLICATION FOR REGISTRATION OF A CERTIFICATION MARK SHALL DESIGNATE THE MARK AS A CERTIFICATION MARK AND SHALL BE ACCOMPANIED BY A COPY OF THE STANDARDS SET BY THE CERTIFIER GOVERNING THE USE OF THE CERTIFICATION MARK**

167.2(b) The registered owner of a collective mark **OR A CERTIFICATION MARK** shall notify the Director of any changes made in respect of the agreement referred to in **SEC. 167.2(A)** [paragraph (a)].

167.3. In addition to the grounds provided in Section 149, the **OFFICE OR THE** court shall cancel the registration of a collective mark **OR CERTIFICATION MARK** if the person requesting the cancellation proves that [only] the registered owner uses the mark, or [that he] uses or permits its use in contravention of the agreements referred to in **SECTIONS 167.2** [Subsection 166.2] or [that he] uses or permits its use in a manner liable

to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

167.4. The registration of a collective mark **OR CERTIFICATION MARK**, or an application therefor shall not be the subject of a license contract.”

SEC. 41. Section 170 of the IP Code is hereby amended to read:

“SEC. 170. *Penalties.* – Independent of the civil and administrative [sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1 (Arts. 188 and 189, Revised Penal Code)] **REMEDIES, PERSONS LIABLE FOR INFRINGEMENT SHALL, UPON CONVICTION, BE PUNISHED, BY IMPRISONMENT AND/OR FINE, OR BOTH, AT THE DISCRETION OF THE COURTS, AS FOLLOWS:**

- 1. IN TRADEMARK INFRINGEMENT, THE INFRINGER SHALL SUFFER:**
 - a. IMPRISONMENT FROM THREE (3) YEARS TO FIVE (5) YEARS, OR A FINE RANGING FROM ONE HUNDRED THOUSAND PESOS (PHP 100,000.00) TO FOUR HUNDRED THOUSAND PESOS (PHP 400,000.00), OR BOTH FOR THE FIRST OFFENSE;**
 - b. IMPRISONMENT FROM FIVE (5) YEARS AND ONE (1) DAY TO SEVEN (7) YEARS, OR A FINE RANGING FROM OVER FOUR HUNDRED THOUSAND PESOS (PHP 400,000.00) TO TWO MILLION PESOS (PHP 2,000,000.00), OR BOTH FOR THE SECOND OFFENSE;**
 - c. IMPRISONMENT FROM SEVEN (7) YEARS AND ONE (1) DAY TO TEN (10) YEARS, OR A FINE RANGING FROM OVER TWO MILLION PESOS (PHP 2,000,000.00) TO FOUR MILLION PESOS (PHP 4,000,000.00), OR BOTH FOR THE THIRD OFFENSE;**
 - d. IN CASE OF COUNTERFEIT GOODS THAT THREATEN LIFE, PUBLIC HEALTH AND SAFETY, THE COURT SHALL IMPOSE THE MAXIMUM PENALTY OF TEN (10) YEARS OF IMPRISONMENT OR A FINE OF FOUR MILLION PESOS (PHP 4,000,000.00), OR BOTH. (SEC. 170, R.A. NO. 8293A)**
- 2. FALSE DESIGNATIONS OF ORIGIN; FALSE DESCRIPTION OR REPRESENTATION. – ANY PERSON COMMITTING THE ACTS**

UNDER SEC. 151 SHALL BE GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF TWO (2) YEARS TO FIVE (5) YEARS AND A FINE RANGING FROM FIFTY THOUSAND PESOS (PHP 50,000.00) TO TWO HUNDRED THOUSAND PESOS (PHP 200,000.00) (SEC. 170, R.A. NO. 8293)”

SEC. 42. Section 171 of the IP Code is hereby amended to read:

“SEC. 171. *Definitions.* – For the purpose of this Act, the following terms have the following meaning:

171.1. x x x

171.2. x x x

171.3. x x x

171.4. x x x

171.5 “ORPHAN WORKS” SHALL REFER TO THE WORKS THAT ARE STILL PROTECTED BY COPYRIGHT BUT WHOSE AUTHORS OR OTHER RIGHT HOLDERS ARE NOT KNOWN OR CANNOT BE LOCATED.”

171.6 [.5] “Public lending” x x x

171.7 [.6] “Public performance” x x x

171.8 [.7] “Published works” x x x

171.9 [.8] “Rental” x x x

171.10 [.9] “Reproduction” x x x

171.11 [.10] A “work of applied art” x x x

171.12 [.11] A “work of the Government of the Philippines” x x x

171.13 [.12] “Technological Measure” x x x

171.14 [.13] “Rights Management Information” x x x **(SEC. 171, R.A. NO. 8293A)”**

SEC. 43. Section 178.4 of the IP Code is amended to read:

“178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person

who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

THE FOREGOING NOTWITHSTANDING, WITH RESPECT TO PHOTOGRAPHS, FILMS, AND PAINTINGS, THE FOLLOWING RIGHTS BELONG TO THE PERSON WHO WAS COMMISSIONED THE WORK:

- A. DISTRIBUTION OR ISSUANCE OF THE WORK TO THE PUBLIC;**
- B. EXHIBITION OR DISPLAY OF THE WORK IN PUBLIC; OR**
- C. COMMUNICATION OF THE WORK IN THE PUBLIC**

PROVIDED, THAT ANY OF THE FOLLOWING ACTS SHALL NOT CONSTITUTE A VIOLATION OF SUCH RIGHTS BELONGING TO THE PERSON WHO COMMISSIONED THE WORK:

- A. INCIDENTAL INCLUSION OF WORK IN AN ARTISTIC WORK;**
- B. LEGISLATIVE AND JUDICIAL PROCEEDINGS AND INQUIRIES;**
- C. UPON EXPIRY OF THE COPYRIGHT TO THE PHOTOGRAPHS; AND**
- D. SUCH OTHER EXCEPTIONS AS MAY HEREAFTER BE PROVIDED BY LAW OR REGULATION (N)”**

SEC. 44. A new Section 179A is hereby inserted after Section 179 of the IP Code to read:

“SEC. 179A. THE USE AND EXPLOITATION OF ORPHAN WORKS SHALL BE ALLOWED SUBJECT TO THE RULES AND REGULATIONS TO BE PROMULGATED”

SEC. 45. Section 182 of the IP Code is hereby amended to read:

“SEC. 182. *Filing of Assignment or License.* – An assignment or exclusive license may be filed [in duplicate with the National Library] **WITH THE BUREAU OF COPYRIGHT AND RELATED RIGHTS upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. **(SEC. 182, R.A. NO. 8293A)”****

SEC. 46. A new Section 183A is hereby inserted after Section 183 of the IP Code to read:

“SEC. 183A. EXTENDED COLLECTIVE LICENSE MAY ALSO BE INVOKED BY USERS WHO, WITHIN A SPECIFIED FIELD, HAVE MADE AN AGREEMENT ON THE EXPLOITATION OF WORKS WITH AN ACCREDITED COLLECTIVE MANAGEMENT ORGANIZATION COMPRISING A SUBSTANTIAL NUMBER OF AUTHORS OF A CERTAIN TYPE OF WORKS WHICH ARE USED IN THE PHILIPPINES WITHIN THE SPECIFIED FIELD. HOWEVER, THIS DOES NOT APPLY IF THE AUTHOR HAS ISSUED A PROHIBITION AGAINST USE OF HIS WORK IN RELATION TO ANY OF THE CONTRACTING PARTIES, AND WHERE THE WORK IS AN ORPHAN WORK AS PROVIDED IN SEC. 179A.”

SEC. 47. Section 184.1(h) of the IP Code is hereby amended to read:

“(h) The use made of a work by or under the direction or control of the Government, by the **BUREAU OF COPYRIGHT AND RELATED RIGHTS**, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;”

SEC. 48. A new Section 184.1(m) of the IP Code is hereby inserted after Section 184.1(l), to read:

“(M) THE COPYRIGHT IN A WORK THAT IS SITUATED, OTHERWISE THAN TEMPORARILY, IN A PUBLIC PLACE, OR IN PREMISES OPEN TO THE PUBLIC, IS NOT INFRINGED BY THE MAKING OF A PAINTING, DRAWING, ENGRAVING, OR PHOTOGRAPH OF THE WORK, OR BY THE INCLUSION OF THE WORK IN A CINEMATOGRAPH FILM OR IN A TELEVISION BROADCAST”

SEC. 49. Section 190 of the IP Code is hereby amended to read:

“SEC. 190. *Importation and Exportation of COPYRIGHTED WORKS [Infringing Materials]*. – Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulation for preventing the importation or exportation of infringing articles prohibited under Part IV of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)

COPYRIGHTED WORKS THAT HAVE BEEN LEGITIMATELY ACQUIRED OR BOUGHT FROM ANOTHER COUNTRY CAN BE LEGALLY BROUGHT IN ANY QUANTITY AND FOR WHATEVER REASON INTO THE COUNTRY, SUBJECT TO THE RULES AND REGULATIONS OF THE COMMISSIONER OF CUSTOMS”

SEC. 50. A new Section 191 of the IP Code is hereby inserted after Section 190, to read:

“SEC. 191. TRANSFER OF POWERS FROM NATIONAL LIBRARY AND THE SUPREME COURT LIBRARY TO BUREAU OF COPYRIGHT AND RELATED RIGHTS. - THE POWERS, DUTIES AND FUNCTIONS VESTED IN, OR PERFORMED AND EXERCISED BY, THE NATIONAL LIBRARY AND THE SUPREME COURT LIBRARY IN CONNECTION WITH THE REGISTRATION ARE HEREBY TRANSFERRED TO THE BUREAU OF COPYRIGHT AND RELATED RIGHTS.”

SEC. 51. The former Section 191 of the IP Code on *Deposit and Notice of Deposit with the National Library and the Supreme Court Library* is hereby renumbered as Section 191A, and is amended to read:

“SEC. 191A. **COPYRIGHT REGISTRATION AND** Deposit. [and Notice of Deposit with the National Library and Supreme Court Library] – At any time during the subsistence of the copyright, the owner **OR OWNERS** of the copyright or of any exclusive right in the work may, [for the purpose of completing the records of the National Library and the Supreme Court Library,] register and deposit the works **WITH THE BUREAU OF COPYRIGHT AND RELATED RIGHTS** [with them, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work] in such **MANNER AND FORM** as [the Directors of the said libraries] may **BE** prescribed in accordance with regulations. [: *Provided*, That only works in the field of law shall be deposited with Supreme Court Library.] Such registration and deposit is not a condition of copyright protection. (SEC. 191, R.A. NO. 8293A)

NO AWARD OF STATUTORY DAMAGES SHALL BE MADE FOR ANY INFRINGEMENT OF COPYRIGHT IN AN UNREGISTERED WORK. (N)”

SEC. 52. Section 202 of the IP Code is hereby amended to read:

“SEC. 202. *Definitions.* – For the purpose of this Act, the following terms shall have the following meanings:

202.1. x x x

202.2. x x x

202.3. An “audiovisual work or fixation” is a [work] **PRODUCTION** that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made audible;

202.4. “Fixation” means the embodiment of sounds, **OR OF** moving **IMAGES**, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

202.5 x x x

202.6. “Publication of a fixed performance or a sound recording means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, That copies are offered to the public in reasonable **QUANTITY** [quality];

202.7 “Broadcasting” means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmissions by satellite is also “broadcasting”; **TRANSMISSION OF ENCRYPTED SIGNALS IS BROADCASTING** where the means for decrypting are provided to the by the broadcasting organization or with the consent;”

SEC. 53. Section 203 of the IP Code is hereby amended to read:

“SEC. 203. *Scope of Performers’ Rights.* – Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1 x x x

203.2. The right of authorizing the direct or indirect reproduction, **IN ANY MANNER OR FORM** of their performances fixed in sound recordings or audiovisual works or fixations [in any manner]

203.3. [Subject to the provisions of Section 206] The right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recordings or audiovisual works or fixations through sale [or rental] of other forms of transfer of ownership;

203.4. x x x

203.5. x x x”

SEC. 54. Section 205.2 of the IP Code is hereby repealed.

SEC. 55. Section 206 of the IP Code is hereby amended to read:

“SEC. 206. *Additional Remuneration for Subsequent Communications or Broadcasts.* – [Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the p] Performer**S AS A COLLECTIVE GROUP** shall [be entitled to an additional remuneration equivalent to at least] **HAVE AN INALIENABLE RIGHT TO PARTICIPATE IN THE GROSS PROCEEDS OF ANY SUBSEQUENT USE OR COMMUNICATION TO THE PUBLIC OF HIS PERFORMANCE, TO THE EXTENT OF** five percent (5%), **AS ADDITIONAL REMUNERATION.** [of the original compensation he or she received for the first communication or broadcast (n)”

SEC. 56. Section 215.1 of the IP Code is hereby amended to read:

“SEC. 215. *Term of Protection for Performers, Producers and Broadcasting Organizations.* –

215.1 The rights granted to performers and producers of sound recordings under this law shall expire:

[(a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and (b)] For sound **OR SOUND AND IMAGES** [images and sound] recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place. **(SEC. 215, R.A. NO. 8293A)”**

SEC. 57. Sec 217.1 of the IP Code is hereby amended to read:

“SEC. 217. *Criminal Penalties.* –

217.1. [Any person violating any provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:] **INDEPENDENT OF THE CIVIL AND ADMINISTRATIVE REMEDIES, PERSONS LIABLE FOR INFRINGEMENT SHALL, UPON CONVICTION, SHALL BE PUNISHED, BY IMPRISONMENT AND/OR FINE, OR BOTH, AT THE DISCRETION OF THE COURT, AS FOLLOWS:**

- (a) Imprisonment [of one (1) year to] **FROM** three (3) years **TO FIVE (5) YEARS**, [plus] **OR** a fine ranging from [Fifty] **ONE HUNDRED** thousand pesos (P[5]100,000) to [One] **THREE** hundred [fifty] thousand pesos (P[15]300,000), **OR BOTH** for the first offense.
- (b) Imprisonment [of three (3)] **FROM FIVE (5)** year and one (1) day to [six (6)] **SEVEN (7)** years [plus] **OR** a fine ranging from **OVER** [One] **THREE** hundred [fifty] thousand pesos (P[15]300,000) to [Five hundred thousand] **ONE MILLION** pesos (P[5]1,000,000), **OR BOTH** for the second offense.
- (c) Imprisonment [of six (6)] **FROM SEVEN (7)** years and one (1) day to [nine (9)] **ten (10)** years [plus] **OR** a fine ranging from **OVER** [Five hundred thousand] **ONE MILLION** pesos (P[5]1,000,000) to [One] **THREE** million [five hundred thousand] pesos (P[1,5]3,000,000), **OR BOTH** for the third [and subsequent] **OR OFTENER** offense[s].
- (d) In all cases, subsidiary imprisonment in cases of insolvency. **(SEC. 217.1(D), R.A. NO. 8293)**”

SEC. 58. Section 227 of the IP Code is hereby amended to read:

“SEC. 227. *Ownership of Deposit and Instruments.* – All copies deposited and instruments in writing filed with the **BUREAU OF COPYRIGHT AND RELATED RIGHTS** [National Library] and [the Supreme Court] in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60, P.D. No. 49)”

SEC. 59. Section 228 of the IP Code is hereby amended to read:

“SEC. 228. *Public Records.* – The section or division of the **BUREAU OF COPYRIGHT AND RELATED RIGHTS** [National Library and the Supreme Court Library] charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The **BUREAU** Director [of the National Library] is empowered to issue such safeguards and regulations as may be necessary to implement this section [and other provisions of this Act]. **(SEC. 228, R.A. NO. 8293A)**”

SEC. 60. Section 229 of the IP Code is hereby repealed.

SEC. 61. Section 238 of the IP Code on the *Notification on Berne Appendix* is hereby transposed and renumbered as the new Section 229, and is amended to read:

“SEC. [238] **229. *Compulsory License on Copyright.*** [Notification on Berne Appendix] – The Philippines shall by proper compliance with the requirements set forth under the Appendix of the Berne Convention (Paris Act, 1971) avail itself of the special provisions regarding developing countries, including provisions for licenses grantable by competent authority under the Appendix **AND AS MAY BE PRESCRIBED BY THE REGULATIONS (SEC. 238, R.A. NO. 8293A)**”

SEC. 62. Sec. 230 of the IP Code is hereby amended to read:

“SEC. 230. *Adoption of Intellectual Property (IP) Policies.* – Schools, universities, **RESEARCH AND DEVELOPMENT INSTITUTIONS AND PUBLIC ENTITIES** shall adopt intellectual property policies **AND PROGRAMS** that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees, and adopting locally-established industry practice fair use guidelines. **SIMILARLY, PRIVATE ENTITIES ARE ENCOURAGED TO ADOPT INTELLECTUAL PROPERTY POLICIES.** These policies may be developed in relation to licensing agreements entered into [by the learning institution with a collective licensing organization] **FOR PURPOSES OF IMPLEMENTING THE STATE POLICIES UNDER THIS ACT. (SEC. 230, R.A. 8293A)**”

SEC. 63. A new Section 231A of the IP Code is hereby inserted after Section 231 to read:

“**SEC. 231A. *REVOCATION OF BUSINESS PERMIT, LICENSE, OR AUTHORITY, BLACKLISTING FROM GOVERNMENT PROCUREMENT.*** – ANY PERSON, NATURAL OR JURIDICAL WHO REFUSES OR FAILS TO COMPLY WITH THE DECISION OR ORDER OF THE DIRECTOR GENERAL OR OF ANY BUREAU OR OFFICE OF THE INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES, THE APPROPRIATE AGENCY, INCLUDING LOCAL GOVERNMENT UNITS, UPON RECOMMENDATION OF THE OFFICE, SHALL CANCEL, REVOKE, OR SUSPEND ANY BUSINESS PERMIT, LICENSE AND/OR AUTHORITY. SUCH PERSON SHALL BE BLACKLISTED FROM GOVERNMENT PROCUREMENT TRANSACTIONS.

SEC. 64. Sections 239, 240, 241, and 242 of the IP Code are hereby renumbered as Sections 238, 239, 240, and 241, accordingly.

SEC. 65. *Separability.* – If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby.

SEC. 66. *Effectivity.* — This Act shall take effect fifteen (15) days after publication in the Official Gazette and a newspaper of national circulation.

Approved,