/Carey

March 2012

IMPORTANT MODIFICATIONS TO THE CHILEAN LEGISLATION

During February of the year in course, several laws that modify the Chilean legislation in regards to industrial property and personal data have entered into force.

On February 6, 2012 Law 20,569 was enacted, modifying Law 19,039 on Industrial Property. This modification aims to incorporate into our Industrial Property Law certain provisions agreed by Chile through the signature of the Trademark Law Treaty (TLT) and the Patent Cooperation Treaty (PCT).

On the other hand, Law N° 20,575, which "states the principle of purpose in regards to the treatment of personal data" better known as "DICOM Law" came into force on February 17, 2012. This law modifies Law 19,628 in regards to the Protection of Private Life, providing a higher level of protection for people's personal data.

I. INDUSTRIAL PROPERTY LAW N° 20,569

By means of this law, certain matters have been modified which were already established in the legislation, applicable both to trademarks and patents; while others regarding trademarks were incorporated. In addition, certain criteria applied to the patent matter have been legally confirmed by virtue of an Administrative Circular.

a) Modifications concerning industrial property applicable to patents and trademarks:

• **Assignment and transfer documents:** The new law allows all contracts related to the assignment and transfer of Industrial Property Rights to be stated in a private document without any subsequent notarization or legalization.

• **Powers of attorney:** According to the new Law, in order to represent a national or foreign applicant at the Trademark and Patent Office and in front of the Industrial Property Court, a simple power of attorney is required, and no subsequent notarization or legalization is

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

necessary. Nevertheless, if said power is given on behalf of a corporation, a document that certifies the faculties of the person who signed the power of attorney to represent the company, must be filed as well. This document must be in original or notarized.

It is important to note that in order to represent the applicant in front of a different Court, the notarization requirement for national powers of attorney and the notarization and legalization requirements in case of foreign powers of attorney are maintained.

• **Filing of powers of attorney:** It is allowed to file patent and trademark applications without having the power of attorney, which will have to be filed within the following 30 days for nationals and within 60 days in the case of foreigners. This modification will simplify procedures in regards to the filing of applications in those cases in which urgent action is required. Nevertheless, the Law maintained the previous procedure, according to which if the power of attorney is not submitted by the deadline, the Patent and Trademark Office will require the submission of the same in a period of 60 days.

• **Renunciation:** It is established that the powers in order to abandon or withdraw an application must be expressly granted to the representative.

b) News regarding industrial property relative to trademarks.

• **Unique form:** It is allowed to apply for a registration of goods and services within a same application, which will origin a unique registration, something that in general terms will simplify the filing of applications through only one trademark form.

• **Division of applications:** It is considered the possibility of dividing registrations and applications which will keep the corresponding filing, registration and priority dates.

The division of applications allows that in the event of an application being filed for different classes of products and/or services and subject to oppositions or observations to one of them, said application can be divided in order to allow a faster registration of the trademark in the classes that were not objected. In turn, by means of the division of registrations it is possible to

keep the validity of registered trademarks for several classes when the cancellation of one of them has been requested.

The law establishes that the division of the application can be requested prior to the issuance of a decision regarding its registration on the part of the Institute (INAPI), in presence or absence of an opposition, or else, during the appeal thereof. The division of a registration may be requested

even when its validity is challenged by means of an annulment trial or during the appeal thereof. Both in the case of an application and registration and when in presence of a substantive observation, opposition or annulment, the division will be appropriate only when as a result of the same, the observation, opposition or annulment are limited to only one divisional application or registration.

c) Legal consecration of regulations relative to the prosecution of PCT applications in Chile:

• **Documents to be filed in Spanish:** The enforceability is consecrated within the Industrial Property Law in regards to the fact that PCT applications entered into Chile must be filed in Spanish.

• **Granting date:** It is legally established that the granting period of PCT applications that have entered into the National Phase in Chile will be considered as from the corresponding international application filing date.

• **Restoration and reestablishment of rights:** Within the legal scope the possibility to rectify the failure to comply with time limits by restoring the priority right is consecrated before the National Institute of Industrial Property as the Receiving or Designated and/or Chosen Office through the re-establishment of rights in case the period of 30 months has already expired in order to enter the National Phase without having filed the application in Chile.

II. PERSONAL DATA: LAW N° 20,575

The most important provisions of this legal body are the following:

• The principle of purpose is established in regards to the treatment of personal data of economic, financial, banking or commercial nature. Said data may be used with the sole purpose of commercial risk assessment and for credit procedures. The disclosure of this kind of data will be only made to the financial entities for the evaluation of commercial risk or the granting of credit

entities and only for said purpose.

• The request of personal data of economic, financial, banking or commercial nature is prohibited in the case of:

- Staff selection processes

- Admission to kindergarten, school or undergraduate education

- Urgent medical assistance

- Application for public service

• It is established as a new obligation for the responsible people for data banks and personal records or data bank suppliers to implement the following principles within their activity:

- Legitimacy

- Access and opposition

- Information

- Quality of data

- Purpose

- Proportionality

- Transparency

- Non-discrimination

- Limitation of use

- Security in the treatment of personal data

The implementation of these principles will function as background for the judge at the moment of determining whether conscientiousness existed or not in the treatment of personal data.

• The Law specifies the concept of “suppliers of information” of this kind of information of economic nature, by pointing out those “natural or legal person who directly perform the treatment, disclosure and commercialization of the data with regards to financial obligations”.

• The suppliers of personal records or data banks which this Law refers to shall have an access registration and supply information

system in which important data regarding the information request will be recorded (applicant's name, purpose, date, time and the person's name that provided the information). In addition, a responsible person in charge of the data treatment shall be designated in order for the users to put into practice the rights acknowledged by Law N° 19,628.

Authors: Guillermo Carey; Francisco Carey; Fernando García