

Patents, Trademarks and Copyrights

Patents, trademarks, trade secrets and copyrights are covered by new laws which align Mexico with many of its trading partners. The laws, which became effective on June 28, 1991, provide increased protection for trade and industrial secrets. Tough penalties are established for their unauthorized use. Some of the regulations interpreting the new laws have not yet been released, and one should consult a Mexican lawyer for up-to-date advice on this issue.

Patents: The term of a patent is 20 years from the date of application. Patents can be obtained for inventions that are new, non-obvious and have industrial application. Patents are available in various technological fields including chemicals, pharmaceuticals, alloys, foods and beverages, biotechnology, plant varieties, and microorganisms. Because of staffing problems at the Mexican Patent and Trademark Office, IMPI (*Instituto Mexicano de Propiedad Industrial*), which falls within the jurisdiction of SECOFI, long delays are still the norm. Even so, the product or process is still protected during the application period.

About one and a half years after an application is first made, SECOFI publishes notification of the patent application. This serves legal notice to third parties who may be using or planning to use the product or process. The notice also informs holders of legitimate identical or similar patents who may wish to contest the application.

The patenting company is required to use the patented product or trademark. Failure to do so exposes the firm to the issuance of a compulsory licence allowing others to take

advantage of the patent. The patent expires two years after issuance of a compulsory licence if the patent holder fails to put the patented product or process into use. A patent may be licensed by the patent holder to another party for use in Mexico based on privately negotiated terms. No government restrictions are imposed on royalties, assistance fees or the like. A licensing agreement must, however, be registered with SECOFI.

Trademarks: The term of a trademark is registered for ten years with renewals for additional ten-year periods. A renewal is automatic if a sworn declaration denies that the mark has been subject to non-use for any period of three consecutive years. Otherwise the trademark is subject to expiry. Expiry is waived, however, where justifiable cause for non-use can be demonstrated. There are no compulsory licences for trademarks. Variation in the use of a trademark does not cause the trademark to expire unless the variations change the essential characteristics of the trademark.

Copyrights: Authors or owners of exclusive rights to software, video and sound recordings, books and other intellectual or artistic works, must register their property with the *Dirección de Derechos de Autor* to obtain copyright protection. The copyright law gives the holder exclusive distribution and reproduction rights for 50 years.

Markings: Mexico now recognizes internationally accepted markings for trademarks and copyrights. A trademark can be marked with MR (*Marca Registrada*) or an "R" symbol, and a copyright with a © symbol.

Product Quality

Many Canadians using suppliers in Mexico have noted that quality remains a problem. Some companies in the very high end of the market have even resorted to importing the raw materials required for manufacturing in order to ensure quality throughout their production process. This practice is prevalent in the northern *maquiladoras*. Government and industry have focused on improving the availability of high quality Mexican-made products. Emphasis is also being placed on reliable delivery. Until a company develops its supply channels, however, problems may be encountered in terms of both the quality and the timely delivery of raw materials or components.

Interviews with Canadian companies operating in Mexico suggest that success depends on establishing appropriate quality standards at the outset and introducing training to ensure that the standards are met. These Canadian firms also believe that, given equal access to technology and training, the Mexican labour force can produce to the highest possible standards. They attribute current quality and delivery problems to an aged infrastructure and not to the abilities of the Mexican workforce.