



**Analysis of Indecopi's Functions
in Light of the Ruling of its Dispute Settlement Bodies**

**Intellectual
Property**

**INDECOPI'S TWENTIETH
ANNIVERSARY COLLECTION**

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TRANSLATION : Business Communications Consulting S.A.C.

DESIGN AND PRINTING : Corporación Gráfica Aliaga SAC.
Domicilio Legal: José de la Torre Ugarte 570 - Lince

Printed in Lima, Peru

November 2013 – First Edition

Printing: 100 copies

Registered with the National Library of Peru – No. 2013- 16523

ISBN: 978-9972-664-44-1

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FOREWORD

INDECOPI's contribution to the economic growth of Peru is rooted in its institutionalism, which serves as the foundations of, among other aspects, the technical decisions issued since its establishment. In this regard and in commemoration of the 20th anniversary of the institution, we believe it is important to share the essence of our job, through a number of publications describing the duties carried out by INDECOPI through each one of its decision-making bodies. Our purpose is to present, in an educational way, the work we have performed during these 20 years to fulfill our mandate aimed at consumer protection, intellectual property, defense of free and fair competition, and developing quality infrastructure in our country.

These books have been articulated following educational guidelines and techniques and the contents of each volume of the collection have been structured in a standard manner. Thus, we start with a theoretical framework which underpins the function entrusted to INDECOPI, developing fundamental concepts for each protected institution. Next, we describe the legislative and jurisprudential milestones achieved during the Institute's evolutionary process.

Finally, as could be expected, we have furthermore set aside space to reflect on the lessons learned and to think into the future by moving towards a more proactive INDECOPI, anticipating and providing the answers that our society and market need.

At this moment, you have a copy of the book about Intellectual Property, which has been written by experts from the Distinctive Signs, Trademarks and Inventions, and New Technologies Departments. This book focuses on the legislation and case-law regarding distinctive signs, collective marks, and appellation of origin; the agency's organizational structure;



the evolution of laws between 1992 and 2012 on protection of inventions and new technologies; the protection of traditional knowledge in Peru; pharmaceutical patenting; the theoretical framework, evolution of laws, and impact of decisions analyzed concerning Copyright. Each of the Departments explains the role played by Indecopi in support of intellectual property over these twenty years.

We hope you find this book useful and conveys, as intended, the extent of the work performed by INDECOPI throughout these 20 years of technical and independent work serving the nation and the commitment of each one of the collaborators who created these pages, as part of the history we bring to you today.

Hebert Tassano Velaochaga
Chairman of the Board of Directors



INTRODUCTION

According to the World Intellectual Property Organization (WIPO), intellectual property refers to creations of the mind: inventions, literary and artistic works, marks, and other distinctive signs, as well as drawings and designs used in commerce. Hence, Intellectual Property Law is the area of Law called upon to protect the creations of the mind and is divided into two branches: Copyright and Intellectual Property.

Copyright is the field of law responsible for protecting literary and artistic works such as paintings, sculptures, musical compositions, cinematographic works -films, novels, poems, and so on; as well as rights related to copyright, in other words, the rights of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

In turn, Industrial Property is divided into, on one hand, inventions and new technologies (known as Patent Law) and, on the other hand, marks and other distinctive signs (known as Trademark Law). Hence, Patent Law encompasses inventions, utility models, and industrial designs; while Trademark Law covers product and service marks, trade names, slogans, certification trademarks, collective marks, and appellations of origin.

In Peru, Indecopi is the national authority competent to deal with Intellectual Property and, in order to properly implement such duties, Indecopi counts with three Directorates: the Directorate of Copyrights, the Directorate of Patents and New Technologies, and the Directorate of Distinctive Signs. Each of these Directorates counts with a Commission responsible for settling disputes, based on the duties it has been assigned¹. Moreover, Indecopi Tribunal counts with a Specialized Chamber on Intellectual Property called to examine, in second instance of last resort, the decisions rendered by these Departments or their corresponding Commissions¹.

¹ There is a Commission on Copyrights, a Commission on Patents and New Technologies, and one Commission on Distinctive Signs. Each Commission is presided over by the Director of the corresponding Directorate.



This book seeks to describe the role of Indecopi on Intellectual Property implemented through these three Directorates. Hence, chapter one describes the duties of the Directorate on Distinctive Signs, where we begin by describing its organizational structure and duties. In section two, we focus on theoretical aspects of the foundation of distinctive signs, including their place within Intellectual Property, the guiding principles of this matter and the classification of the regulated distinctive signs in Peru. A third section describes the governing law, including the international and local community law. Section four gives an overview of the case-law connected with distinctive signs from which we can draw the criteria applied by the competent authority on issues such as the reputation of marks, commercial names, and so on. Section five provides an explanation of the technical aspects of collective marks, and the activities performed by the Directorate of Distinctive Signs in order to disseminate the use of this feature as a tool to encourage rural entrepreneurship, Finally, section 6 deals with the Appellations of Origin in Peru by first giving a theoretical and conceptual background so as to better understand this institution and then we will provide an explanation on the applicable laws, including the procedure to file for registration of an appellation of origin, titles and the protection system, the institution of Regulating Councils, and so on. Furthermore, we provide a brief background of the appellations of origin in Peru and the authorized Regulatory Councils. Finally, we have included a description of the activities currently implemented by the Directorate of Distinctive Signs and we reflect upon the difficulties, challenges, and perspectives encountered by the appellations of origin in Peru.

Chapter two deals with the topics related to the competition of the Directorate of Patents and New Technologies. A first section explains the organizational structure of the Directorate and the evolution of laws between 1992 and 2012. A second section reviews the Protection of Traditional Knowledge in Peru considering the legal aspects, the activities implemented, and the results obtained. A third section is devoted to Patents and explains how the Patents System of Peru work, the term of protection, pharmaceutical patents, and the projects and activities implemented by the Directorate on Patents and New Technologies, as is the case of the Fast Patent, and the Inventions Contest. Finally, we address Pharmaceutical and Public Health Patents.

The third chapter reviews the issues under the competition of the Directorate of Copyright. Hence, we first describe the legal framework of Copyrights and then the evolution of law. Next, we describe the dissemination promotion campaigns implemented by the Directorate on Copyrights, as is the Intellectual Property Week, the Anti-Piracy Crusade, Cinema Day, and the campaign "Buy legal, buy an original." A fourth section looks at issues related to the implementation of the Peru-U.S. Trade Promotion Agreement. Section five describes



the Copyrights Online Registration System. Section six describes the one day registration process and then, section seven explains the education project on Copyrights. Sections eight and nine list the different activities carried out by the Directorate on Copyright, as part of its duties. Section ten illustrates the contribution to the administration of justice based on the duties and activities deployed by the Directorate on Copyrights.

We hope this book will contribute to disseminate the different tools offered by intellectual property and the mechanisms that Indecopi, as the national competent authority, makes available to creators and inventors and entrepreneurs who hold marks and other distinctive signs to protect their rights.

Patricia Gamboa Vilela
Director – Distinctive Signs

OBJECTIVES

Strengthen the work of Indecopi in favor of intellectual property in view of protecting creations of the mind.

Further deepen the analysis and examination of the two branches of Intellectual Property: Copyright and Intellectual Property.

Analizar el Derecho de Autor que tutela las creaciones artísticas y literarias, tales como las pinturas, esculturas, piezas musicales, películas, novelas, poemas, entre otros y los derechos conexos al derecho de autor, que son los derechos que ostentan los artistas intérpretes y ejecutantes sobre sus interpretaciones y ejecuciones, los derechos de los productores de fonogramas sobre sus grabaciones y los derechos de los organismos de radiodifusión sobre sus programas de radio y televisión.

Analyze Intellectual Property Law, which in turn is divided into, on one hand, inventions and new technologies (known as Patent Law) and, on the other, distinctive signs (known as Trademark Law). Patent Law encompasses inventions, utility models, and industrial designs; while Trademark Law covers product and service marks, trade names, slogans, certification trademarks, collective marks, and appellations of origin.

CHAPTER 1:

Distinctive Signs



1.1. Department of Distinctive Signs²

The Department of Distinctive Signs (DDS) is the national authority competent on distinctive signs. As such, DDS is responsible for managing the product or service marks, trade names, slogans, collective marks, certification trademarks, and appellations of origin system as well as any other sign designated by law.

Hence, in accordance with the legal framework in force¹, DDS is competent to record renewals and amendments related to the registered rights (transfers, transfers by merger, name change, name change by merger, change of address, licenses for use, registration of seizures orders, and registration of notices in security rights).

The organizational structure of DDS includes a panel (the Commission on Distinctive Signs –CDS) responsible for examining and settling (in first administrative instance) disputes concerning mark rights, oppositions, cancellations, and voidances. The CDS is also responsible for ruling on proceedings concerning infringements to the industrial property law insofar as distinctive signs is concerned.

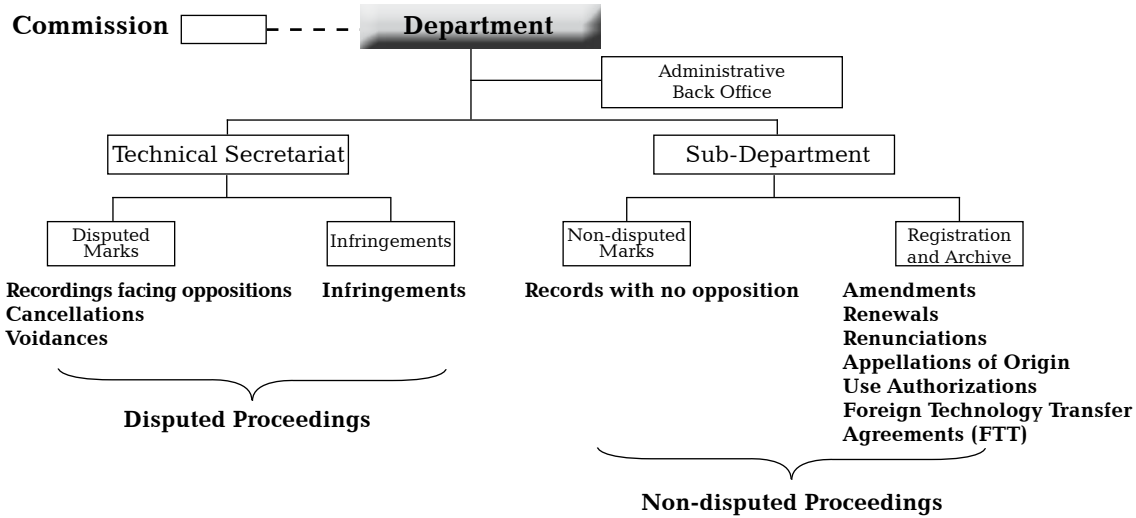
In addition, the DDS offers users, internal and external, phonetic search services and figurative elements search concerning distinctive signs; registration services (copies and certified copies of the registration). In addition, the DDS is responsible for issuing Expert Reports upon request of the Public Ministry (Prosecutor's Office) regarding distinctive sign which may be identical or confusingly similar.

In order to administer these procedures and services, the DDS has divided its work in the following manner (See Figure No. 1):

² The section was prepared by Patricia Gamboa Vilela.

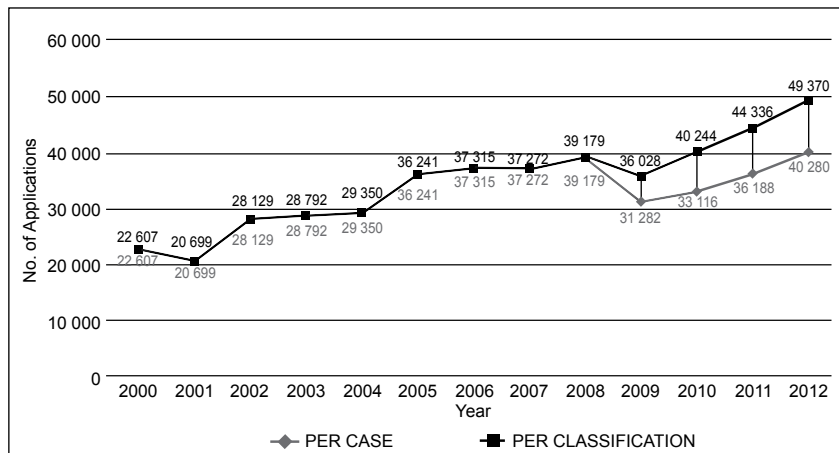
³ The DDS is governed by: Indecopi Organizational and Operations Law; Decision 486 of the Commission of the Cartagena Agreement (Common Industrial Property System); Decision 689 of Commission of the Cartagena Agreement (Amendment to some articles of Decision 486); and Legislative Decree No. 1075 (Supplementary Provisions to Decision 486).

Figure No. 1
Department of Distinctive Signs (DSD)



Service requirements of the DDS have increased significantly; this is a result of the country's economic growth. Next, we show the evolution of the caseload between 2000 and 2012 (See Figure No. 2).

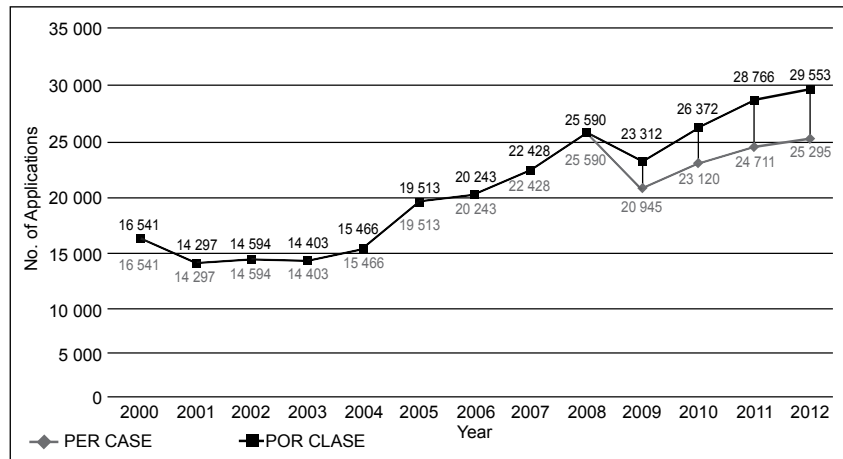
Figure No. 2
Department of Distinctive Signs
Applications per Case and per Class – 2000 to 2012



Source DDS.

Most of the procedures are related to new applications for registration of distinctive signs. The table below shows such increase (See Figure No. 3):

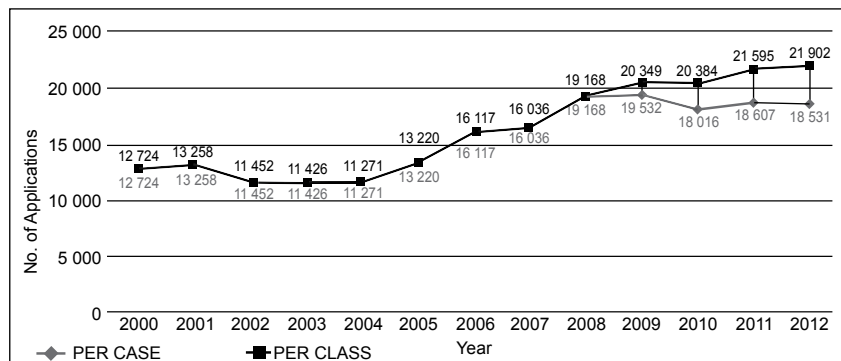
Figure No. 3
Department of Distinctive Signs
Applications Granted per Case and per Class – 2000 to 2012



Source DDS.

Concerning new applications granted between 2000 and 2012, we can provide the following figures (See Figure No. 4):

Figure No. 4
Department of Distinctive Signs
Registrations Granted per Application and per Class – 2000 to 2012



Source DDS.



It is important to notice that out of the total number of applications for registration and the registrations actually granted; approximately 60% correspond to national applications. This proves that local entrepreneurs are gradually becoming more aware of the importance of protecting their marks and other distinctive signs with their registration.

The constant increase of the number of applications for registration of distinctive signs is a challenge for Indecopi because the agency needs to continuously strengthen its operative capacity in order to properly respond to the growing demand of businesspersons to protect their intangible assets.

Following this brief portrayal of the DDS's duties and structure, we will focus on theoretical aspects of distinctive signs and we will provide information on the experience and progress achieved by Peru on distinctive signs.

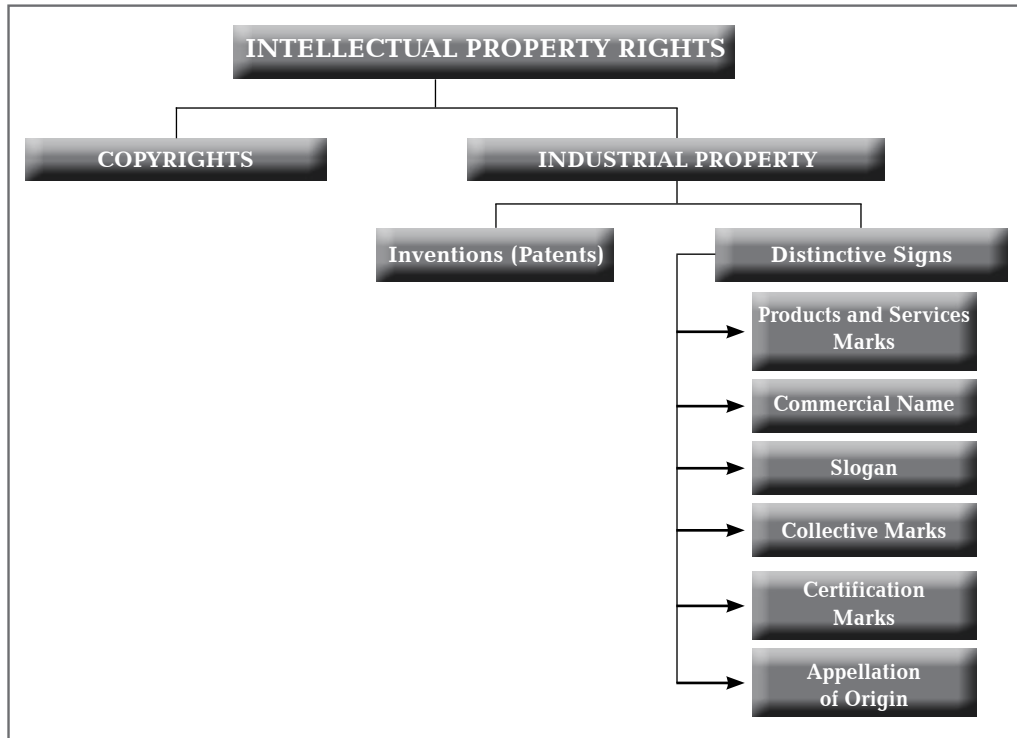
1.2. Foundations of Distinctive Signs⁴

1.2.1. Distinctive Signs and its place in Intellectual Property

Traditionally, distinctive signs are considered one of the legal institutions of Industrial Property, which together with Copyrights make up Intellectual Property (See Figure No. 5):

⁴ This section was written by Dante Vilches Livia

Figure No. 5
Distinctive Signs and Intellectual Property Rights



5 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

"Article 1- Nature and Scope of Obligations

[...]

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

[...]

It is worth noting that although the structure presented considers Intellectual Property as a concept containing copyrights and industrial property, the Spanish legislation establishes a different structure. In fact, '[...] it is worth remembering that the expression industrial property refers to a section of the legal system closely related to intellectual property. This term has different meanings in diverse countries. This is so because it is used as a comprehensive term for industrial property and copyright [...], whether as a specific name for copyright, as is the case of Spain, where chapter III, title IV of the Second Book of the 1889 Civil Code bears the title 'About Intellectual Property' and the current law calls it: Amended Text of the Intellectual Property Law.'" FERNANDEZ-NOVOA, Carlos; OTERO LASTRES, Jose Manuel, and BOTAN AGRA, Manuel. (2009). Industrial Property Handbook. Madrid, Marcial Pons. p. 48.



One of the main background sources of this structure is the "Agreement on Trade-Related Aspects of Intellectual Property Rights," Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco, on 15 April 1994. This agreement establishes that the expression "intellectual property" encompasses copyrights, trademarks, industrial designs, and patents, among other categories⁵.

Concerning domestic law, article 3 of Legislative Decree No. 1075 establishes that one of the components of Industrial Property are distinctive signs, which would consist of the products and services marks, collective marks, certification marks, commercial names, slogans, and appellations of origin⁶.

1.2.2. Guidelines for the establishment of a specific concept of distinctive signs

Seeking for a specific concept of distinctive signs in the doctrine and initial laws is a complex task. Hence, legal practitioners have decided to draw up the theory of distinctive signs based on the theories of trademarks, paradigm par excellence of distinctive signs, and a search for a continental theory that allows to understand the institution in a more general manner.

There are many reasons to understand such choice, by simply mentioning the legal institution we wish to examine –distinctive signs, we seem to be facing a pleonasm. In fact, the ROYAL SPANISH ACADEMY provides as a first definition of the term "sign": "... *any object*,

6 Legislative Decree No. 1075
"Art. 3.- Constituent elements of industrial property
For the purposes of this Legislative Decree, industrial property refers to:
a) Invention patents;
b) Protection certificates;
c) Utility model patents;
d) Industrial designs;
e) Business secrets;
f) Layout-designs (Topographies) of integrated circuits
g) Products and services trademarks
h) Collective marks;
i) Certification marks;
j) Commercial names;
k) Slogans; and
l) Appellations of origin."

phenomenon, or event which, naturally or conventionally, conveys a meaning representing or replacing another like item⁷.” “On this regard, it is worth mentioning that the European doctrine has highlighted that the word sign alludes to a vast phenomenological reality which encompasses anything that is capable of conveying a message⁸.”

Looking at the definition developed by the prestigious Academy and the reference quoted taken from a European authority on the matter, we can conclude that a ‘sign’ is the concrete representation containing a message and which can be identified in reality with our senses. Hence, insofar as a sign is identified, it is possible to distinguish other signs or phenomenological realities as individual units containing other messages.

Although the prevailing laws do not contain a definition of ‘distinctive sign,’ such laws do state what mark/trademark means, defining it as any sign capable of graphical representation serving to distinguish products or services in the market.

Based on these ideas, we can observe that the legislators decided to take two elements – common to all distinctive signs- which allow us to establish certain guidelines in order to arrive at a concept of distinctive sign: the existence of a sign susceptible to graphical representation and its relationship with a given product or service offered in the market.

7 On this regard, see the amended meaning of the term SIGN in the twenty-second edition of the Royal Spanish Academy Dictionary, electronic version available at: <http://www.rae.es> (Queried on 04 January, 2013).

8 STELLA RICHTER, M. (1998). “Oggetto della registrazione e requisiti di validità del marchio”. In: AAVV. (1998). *Commento temático della legge marchi*. Torino, Giappichelli Editore, p. 159 & suite. o VANZETTI, Adriano & DI CATALDO, Vincenzo. (1996). *Manuale di Diritto Industriale*. Seconda Edizione. Milano, Giuffrè editore. References quoted by FERNÁNDEZ-NOVOA, Carlos; GARCÍA VIDAL, Ángel, & FRAMIÑÁN SANTAS, Javier. (2009). Community case-law on mark/trademarks. Articulated comments, recompilation, and extracts. (2007). Granada, Editorial Comares, Colección Estudios de Derecho Mercantil- práctica [Collection of Papers on Mercantile Law] (directed by José Miguel Embid Irujo), p. 6. This latest volume includes an interesting comment on the case-law resulting from the TJCE Ruling (Third Chamber) of 25 January, 2007, case C-321/03, Dyson Ltd. v. Registrar of Trade Marks. The entire ruling has been included at the end of the book.



With this in mind, we can say that distinctive signs are such signs or phenomenological realities capable of being represented graphically and which are closely related with a concrete product or service present in the real world. In fact, a distinctive sign is a specific reality that can be perceived by the senses through its graphical elements that can be perceived by the market participants as they intrinsically relate with given products or services. This relationship between sign and product or service must be perceived in a concrete reality and must serve to distinguish them from other fully existing distinctive signs.

A distinctive sign aims at distinguishing common realities –products or services, as applicable, with their nature and regulation- conveying a given message that is shaped by the idea which the holder of the mark wishes to express, for example, or undertaken –in the case of appellations of origin since among its characteristics is the fact that they are independent of human willingness- by holder and transmitted to the outer world through signs. Awareness of the message may result from the experience of using the service or product or from the messages sent by holder through the advertisements it makes of the products or services it wishes to distinguish.

If a sign fails to distinguish the intrinsic relationship between such sign and a given product or service in the realm of products and services of like nature, we find ourselves with a sign that is incapable of distinguishing the reality which such distinctive sign was intended to identify; hence such sign is not distinctive in terms of the Industrial Property line of reasoning⁹.

In fact, in terms of Industrial Property, there are some signs that do not allow to distinguish one reality from another since they convey more than one message. Following this line of reasoning, if we consider the sign consisting of the word "clear" with no other reference, the market participants would not know if we are referring to a mark, a product feature, or to any of the thirty three definitions offered by the Royal Spanish Academy Dictionary. It is within this context that the reference to distinctive sign becomes meaningful. In fact, at some point of our analysis it becomes impossible to distinguish the messages that can be offered in the market through the distinctive signs if we only count with the presence of such signs, in other words, if we only use signs with no additional reference that can be offered in the

⁹ The sole reference to distinctive sign leads us to determine the potential existence of a sign that is not distinctive within the scope of Industrial Property, which would be far from the real concept of sign –as has been determined by the Royal Spanish Academy and the European doctrine mentioned above, which should always identify a concrete reality and, consequently, would allow to distinguish such reality.

phenomenological reality made available to market participants. It is necessary to associate such signs with specific realities, i.e. products or services¹⁰.

In this stage of our analysis, we can observe that there is dissonance between the concept of 'sign' –meaning the concrete representation which is identical to reality and allows to distinguish it as such- and the distinctive sign of Industrial Property. Hence, in this last scenario, we find ourselves in front of a superstructure created in order to distinguish such thing by its own perception as a concrete identity –sign- which is already distinguished.

1.2.3. Principles of Distinctive Signs

a. *Principle of Territoriality*

By virtue of the principle of territoriality, any right resulting from the registration of a distinctive sign is limited to the territorial scope of such country where the sign was registered¹¹. According to Otero Lastres, these rights have national scope since their effects are limited to the territory of the country granting such protection¹².

10 We must not forget that signs are representations that convey a message, such message may or may not be known. In fact, any sign represents something, where it's most simple meaning is the drivers of its configuration. Examples of this latter case are some of the representations made by artists, which frequently do not portray a known message.

11 One exception to the Principle of Territoriality is well-known trademark. Hence, the Commission of Distinctive Signs of Indecopi has stated that "... likewise, though the strict application of the Principle of Territoriality means that the protection granted to a registered trademark is only applicable within the scope of the territory of the country granting such registration, when we are faced with trademarks that have achieved the level of notoriety, it is likely that third parties will intend to take advantage of the prestige earned by such trademarks and will try to register under their names such well-known trademarks belonging to third parties and which have not been registered with the Peruvian authorities by their legitimate holder. This circumstance has yielded the need to establish as an exception to the Principle of Territoriality, the case of well-known trademarks, which are protected irrespective of the country in which they are registered or used, depending of the acquisition of trademark rights system." Ruling 0131-2011/CSD-INDECOPI, dated 19 January, 2011, issued by the Commission of Distinctive Signs of Indecopi regarding Case 387751-2009, p. 27.

12 FERNANDEZ-NOVOA, Carlos, OTERO LASTRES, Jose Manuel, & BOTANA AGRA, Manuel. (2009). Op. Cit., p. 63.



b. Principle of Registration and Recordation

The protection afforded to distinctive signs –save for commercial names and well-know trademarks- begin with the recording of such sign with the competent authority¹³. Hence,

“... we find ourselves in the presence of rights that stem from an administrative act of concession that has been ordered after the procedure established in the applicable laws has been completed in view of granting each right. On the other hand, although in some special circumstances [...] protection may be afforded even without such a registration, the true exclusive and excluding right (in other words, the full and comprehensive effects of rights) stems from the concession and the registration of the corresponding right¹⁴.”

c. Principle of Speciality

Although this principle has mainly evolved in the academic world of trademarks, we must not lose sight that distinctive signs, as such, are intimately related to a given product or service, as applicable.

In fact, through distinctive signs, market participants recall the particular features of products or services with which such signs are associated. Hence, by virtue of the Principle of Speciality, the protection granted to distinctive signs is limited to the products or services with which they are associated¹⁵.

13 Like in the case of the Principle of Territoriality, a well-known trademark is an exception to the Principle of Registration and Recordation; such well-know trademark need not be registered in order to enjoy the protection of a registered one. In this sense, the Commission of Distinctive Signs of Indecopi has stated that “[...] *although the exclusive right of a mark, pursuant to the laws in force, is obtained by the registration of such mark with the competent authority, in the case of notorious or well-know trademarks, the protection of such marks/trademarks is not substantiated on the registration but rather on the mere fact of their notoriety since we understand that if a mark has become prestigious and has earned a reputation through its use in the market, it should generate a right in favor of its holder, who is the main driver for the mark to have attained such quality of notoriety.*” Rulings 0131-2011/CSD-INDECOPI dated 19 January 2011, rendered by the Commission of Distinctive Signs of Indecopi regarding Case 387751-2009, p. 27.

14 FERNANDEZ-NOVOA, Carlos, OTERO LASTRES, Jose Manuel, & BOTANA AGRA, Manuel. (2009). Op. Cit., p. 60 et suite.

15 “[T]he strict application of the Principle of Speciality determines that the protection to be granted to a registered mark is limited to products or services that are identical or similar to the ones the mark was registered for. Nevertheless, in the case of well-know trademarks, protection may be granted even when someone intend to register identical or similar marks to distinguish products or services of a different nature and not economically associated with those the mark is actually distinguishing, this will depend on the analysis of the specific case.” Ruling 0131-2011/CSD-INDECOPI, dated 19 January, 2011, issued by the Commission of Distinctive Signs of Indecopi regarding Case 387751-2009, p. 27.

1.2.4. Importance of Distinctive Signs in the Market

Distinctive signs are tangible assets that allow holder to add value to his/her relationships with clients or potential clients. This value added is possible in view of the fact, as expressed earlier, that distinctive signs are governed by certain principles which entail the existence of a structure posing less risk when making investment or consumption decisions.

In fact, this structure, stemming from the principles that inspire distinctive signs, may instill in entrepreneurs (i) a sense of security in that their distinctive signs belong to them as from registration thereof; (ii) enjoyment of protection, within the national territory, of their registered distinctive signs for the products or services mentioned in the registration order or those that belong to related industries or market segments in which they could venture; (iii) the establishment of unique bonds with customers or potential customers through a communication channel determined by their own distinctive sign, through which entrepreneurs may convey quality and security/safety messages, and so on.

In light of the foregoing, the holder of a trademark will be encouraged to feed into the communication with customers or potential customers with desired messages, resting assured that the messages holder wishes to convey will be perceived as coming directly from the title holder of the distinctive sign. With a secure communication channel¹⁶, the title holder of a distinctive sign will be encouraged to increase the quality of products offered, since holder will be certain that it will enjoy the benefits resulting from such effort¹⁷."

¹⁶ Although this communication channel may be affected by unauthorized use by third parties of a registered distinctive sign (including messages sent to consumers undesired by the rightful holder, verbi gratia, low quality, insecurity, unhealthy, and so on), title holder may resort to legal mechanisms to obtain legal protection and reestablish exclusive communication channels.

¹⁷ On this regard, we recommend reading a very interesting article by Brazilian researcher Carlos MATHEUS in which he shares some thought on the importance of trademarks in a market as tools to connect entrepreneurs and consumers; such contact is of the utmost importance to improve trading of products and services. *"A mark is the visual or oral representation of human work when the individual performing such work expects some sort of compensation for such work. [...] Companies competing for consumer preferences in a given competitive market need such marks as a key tool to improve the marketing of their products. Recent experiences in Brazil and on other western countries show that unbranded products cannot survive in the market when competing against branded products. Marks have become, in a mass consumer market, the communication channel between producer and consumer. Consumers wish to know if the trademark is known and judges such trademark by the products sold. Such word builds the product name and buyer trusts such name. Without seeing the trademark at the time of purchase, how can buyer know beforehand if a product meets his expectations? Trademarks transfer upon products a notion of credibility, a belief. Buyer trusts manufacturer of such product identified with the*



In addition, it is worth noting that the benefits of a structure like the one we have outlined instills in consumers the elements necessary to make, in a simple manner, their consumption decision, trusting that the products with the distinctive sign will meet their expectations. Hence, according to authorized Spanish doctrine "... what Law is called upon to ensure is that such conviction regarding an alleged or real demeanor is not deceived or cheated¹⁸".

1.2.5. Types of Distinctive Signs

The paradigms of distinctive signs are products and services trademarks, which have been considered by legal practitioners as legal institutions which have served to develop a comprehensive realm for distinctive signs.

The development achieved by doctrine and by laws regarding products and services trademarks has transferred over, insofar as is applicable, to the other distinctive signs. However, it is necessary to pinpoint that each element included in distinctive signs has its own protection and function in the market.

trademark and believes that such manufacturer does not wish to lose future sales if producer reduces the quality of the products sold. [...] The trademark, therefore, marks the encounter between consumers and producers. At first this encounter is subjective on a more positive image when it is so considered by consumer. However, such encounter becomes objective through actions. The action of buying is a confirmation of the positive image of the mark in the mind of buyer and the confirmation of the producer's success in managing to portray a positive image of his products." (Translated from Portuguese by author). MATHEUS, Carlos E. M. (1982). "Marca, veículo de desenvolvimento da empresa". In: ASSOCIAÇÃO BRASILEIRA DA PROPRIEDADE INDUSTRIAL (1982). Anais do II Seminário Nacional de Propriedade Industrial. Segundo Edição. Rio de Janeiro, Associação Brasileira da Propriedade Industrial, pp. 90 et suite.

- 18 BAYLOS CORROZA, Hermenegildo. (1993). *Tratado de Derecho Industrial [Industrial Law Treaty]*. Second edition. Madrid, Editorial Civitas SA., p. 819. In addition, Baylos points out that "[...] the trademark in the consumer's conviction, would be devoid of any sense as a sign if it had not been imposed by a single entrepreneur, who is the one who chose, adopted and uses such mark to distinguish his products or services in a market. And if the presence of the mark is unique, this means that all products or services marked with such trademark were made by him, and this is why they are the same; they are identical. This is the kind of convictions created in the minds of consumers from such signals."

a. Products and Services Trademarks

Products and services trademarks are distinctive signs that allow diverse market participants to distinguish in the market the business origin of a product or service from those of a third party¹⁹. In the words of an authorized European doctrine:

"... it is not enough [...] to say that a trademark is a sign intended to identify products or services of a company to distinguish them from those of other companies. As a first matter of clarification, we must add that a trademark does not identify a single product or service but rather it portrays an identification that could be called 'numerical'. The trademark distinguishes a product not as belonging to a concrete and given individual but as one more issue of the class of products that are part of all the products designated with the same trademark. The trademark perception, thus, becomes a piece of information that, on its own, affirms that the object designated with it belongs to a class: the class of objects bearing the trademark. It is one more of the lot²⁰."

Concerning our laws, article 134 of Decision 486 stipulates that a trademark may consist of any sign that is capable of distinguishing products or services in the market. Hence, it is possible to register as a trademark any sign that can be represented graphically such as: words or combination of words, images, shapes, symbols, pictures, logos, monograms, portraits, labels, emblems and coats of arms, sounds and smells, letters and numbers, a given color with a given shape, a combination of colors, the shape of products, their containers, packages, or any combination of the signs listed.

¹⁹ Doctrine may have different classifications for trademarks; such differences depend on whether the classification is based on its structure (among which denominative, only graphic, or denominative and graphic), purposes (defensive or offensive marks), degree of knowledge (notorious and well-known marks), conceptual contents (fantasy, evocative, generic marks), and so on. The prevailing laws have taken into account some of those classifications. Hence, we find that when the laws stipulate the patentability requirements that must be met by a mark seeking registration, it refers to its descriptive, generic, fantasy, notoriety nature –in the cases of opposition to the registration of a mark, as elements that allow to determine whether or not a mark should be cleared for registration with the public registry managed by each of the intellectual property bureaus. In our legislation, we can observe, among others, articles 135, 136, and 224 of Decision 486 and articles 45 to 50 of Legislative Decree 1075. In order to review the types of marks developed by doctrine, read, among other works, the careful classification in: CABANELLAS DE LAS CUEVAS, Guillermo y BERTONE, Eduardo. (2003). Derecho de marcas. Volume I. Second Edition. Buenos Aires, Editorial Heliasta, pp. 293 et suite.

²⁰ BAYLOS CORROZA, Hermenegildo. (1993). Op. Cit., p. 817.



b. Certification Marks

Certification marks are distinctive signs to be used on products or services whose qualities and features have been certified by the trademark holder, in accordance with the rules for use. Pursuant to Article 186 of Decision 486, any company or institution -organized under private or public law- or an agency -government, regional, or international- may hold certification marks.

The application for registration of a certification mark filed with the competent authority must be accompanied by the usage guidelines for trademarks. Hence, by virtue of such guidelines, products or services may be subject to certification by holder, determining the features guaranteed by the trademark and describing the way such features will be monitored before and after its use is authorized.

As we can appreciate, the prevailing component in the certification mark is quality. The products or services bearing such mark would imply to consumers that such products or services meet the quality or features certified by the trademark and subject to the usage guidelines²¹.

c. Collective Marks

A collective mark is a distinctive sign that allows to distinguish the origin or any other common feature of any product or service belonging to different companies and which use such feature under control of the title holder, in accordance with the usage guidance.

Associations of producers, manufacturers, service providers, organizations or groups of people, legally established, may apply for the registration of a collective mark to distinguish in the market the products or services offered by their members.

21 On this regard, FERNÁNDEZ-NOVOA –further developing what the Spanish Law calls guarantee mark [*marca de garantía*]- he states that “[...] we can deduce that guarantee marks fulfill functions that are partially different from those fulfilled by the company’s genuine trademark for its products and services. With the guarantee mark, in fact, the indication function of the business origin disappears and, at the same time, the quality function becomes the prevailing indication of the products or services. [...] The basic mechanism ensuring fulfillment of the indicating function of quality by the guarantee marks is, precisely, the observance of the Usage Guidelines which the holder of the guarantee mark shall prepare.” FERNÁNDEZ-NOVOA, Carlos, OTERO LASTRES, José Manuel, & BOTANA AGRA, Manuel. (2009). Op. Cit., pp. 762 et suite.

d. Commercial Names

The commercial name is the distinctive sign which associates the economic activity of a company or mercantile establishment.

The exclusive right regarding the commercial name is obtained on the first use in trade and finishes when such name is no longer used or when the company or establishment that used it is no longer in business.

In fact, the commercial name is an exception to the Principle of Registration and Recordation since the registration only has a declarative nature.

e. Slogan

A slogan is a distinctive sign consisting of a word, phrase, or caption used to supplement a trademark. Hence, the application for registration of a slogan must specify the mark whose registration is sought or the registered trademark with which such slogan will be used.

Following this line of reasoning, a slogan shall be transferred along with the trademark with which it is associated and its term of effectiveness will depend on the sign.

Based on the foregoing, we can appreciate the accessory nature of the slogan in connection with the mark it supplements.

f. Appellations of Origin

The appellation of origin is the distinctive sign consisting of a geographic indication made up by the name of a country, region, or any other specific place or consisting of an appellation which refers to a given geographic area without any reference to country, region or any other specific place and which is used to distinguish a product originating in such area and whose quality, reputation, or other features must be exclusive or essential to the geographic environment in which it occurs, including natural and human factors.



1.3. Laws on Distinctive Signs²²

1.3.1. Law Applicable to Distinctive Signs in Peru

In a way, the legal system of Peru, at least concerning substantive norms, it is not so different from the laws applied in other parts of the world. In fact, the laws on industrial property and, therefore, on distinctive signs, continues to move towards greater harmonization and simplification.

Peru, in view of making the protection of the elements comprising industrial property more accessible for investors and, in turn, showing how a country capable of providing legal security on this matter counts with a legal system comprised by norms from the Andean Legal System (community laws), domestic laws (national laws), and international instruments (international laws) regarding which Peru is a signatory country or to which Peru has acceded.

3.2. Community Laws

Peru, as a member country of the Andean Community –along with Bolivia, Colombia, and Ecuador, applies the provisions stipulated under Decision 486, Common Intellectual Property Regime. This Decision was passed in September 2000 and entered into force on December 01, 2000.

Decision 486 stipulates the substantive rights and procedural matters regarding the registration and protection of distinctive signs. This Decision is a supranational law which stands out for its direct application (in other words, there is no need to follow any special procedure for it to be included in the domestic laws), prevalent (i.e. it prevails over domestic laws), and immediate (its approval suffices for it to become effective)²³.

²² This section was written by Sandy Norberto BOZA ALZAMORA.

²³ For further details on the features of the legal system of the Andean Community Cf.: NOVAK, Fabián. (2003). "La Comunidad Andina y su Ordenamiento Jurídico". ["The Andean Community and its Legal System"] In: INSTITUTO DE ESTUDIOS INTERNACIONALES (IDEI). (2003). *Derecho Comunitario Andino* [Andean Community Law]. Lima, Pontificia Universidad Católica del Perú.

Hence, Decision 486 includes the standards governing the registration and protection of products and services trademarks, commercial names, slogans, and appellations of origin; as well as the systems of collective and certification marks and well-known marks. Specifically, such Decision determines what we must understand a mark to be, what signs can be considered marks, the cases in which signs cannot be registered as trademarks (absolute or relative registration prohibitions), the requirements of any application for registration of a mark and the procedure to followed in processing the application for registration. This is also true regarding the other distinctive signs. Moreover, Decision 486 includes the rules governing the applications for cancellation and voidance of a mark registration and the potential to file claims for infringements to industrial property rights.

In August 2008, Decision 689 was passed in order to allow country members of the Andean Community to develop through domestic laws the aspects stipulated in Decision 486. Hence, member countries were temporarily authorized to establish a multi-class marks system; to establish as optional the requirement to register a usage license agreement for a trademark; to establish that it is not possible to protect an appellation of origin when it is susceptible of generating confusion with a mark whose registration is sought or a mark registered before in good faith or with a mark notoriously known; to develop exclusively for marks a system that allows to enforce measures in border areas to products in transit, and so on.

1.3.3. International Legal Framework

Among the international instruments applied in Peru, the Paris Union for the protection of industrial property is worth highlighting. This Convention dates back to 1883 and is one of the first international treaties stipulating common standards on industrial property. Peru acceded in 1995; presently, 174 countries are contracting parties to the Convention. Some of the contributions of the Paris Convention worth noting are the principle of national treatment and right of priority. The principle of national treatment means that the nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals. The right of priority means that any person who has duly filed an application for registration in one of the countries of the Union shall enjoy, for the purpose of filing in the other countries of the Union, a right of priority during the periods hereinafter fixed (in the case of marks, a term of six months) and such applications shall be deemed to



have the same date as the first application filed in connection of which the right of priority is claimed²⁴.

In addition, we must mention the Agreement on Trade Related Aspects of Intellectual Property (TRIPS),²⁵ which is an instrument establishing the minimum standards and basic principles to harmonize the intellectual property systems of the world. For example, the minimum protection period of rights and the mechanisms to observe the right.

The Law Treaty (TLT) is a treaty sponsored by the World Intellectual Property Organization (WIPO) adopted in 1994 and whose purpose is to simplify and harmonize the procedures related to the registration of marks in member countries. Hence, in order to standardize procedures, the TLT stipulates the formalities and requirements that may or may not be required of persons wishing to register marks. In Peru, this agreement entered into force on 06 November, 2009. There are two aspects worth noting about this TLT and which entailed amendments to our legislation: such elements are related to possibility for applicants to file applications for registration to distinguish products or services in several classes of the International Nice Classification of Goods and Services, i.e. filing applications to several classes. Moreover, hoping to reduce costs for applicants, the TLT has eliminated the authorization and certification of signatures, unless it is related to the denunciation of a registration, if the legislation of a country member so requires.

Concerning the protection of appellations of origin, The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which entered into force for Peru on 16 May, 2005. The purpose of this instrument is to allow for the international protection of the appellations of origin in member countries.

1.3.4. Domestic Legislation

Legislative Decree 1075 (Legislative Decree approving supplementary provisions to Decision 486) entered into force on 01 February, 2009. With this law, Peru used some of the powers

24 On this matter, Cf. BODENHAUSEN G.H.C. (1969). *Guía para la aplicación del Convenio de París para la Protección de la Propiedad Industrial*. [Guidelines for the Application of the Paris Convention for the Protection of Industrial Property] Geneva, BIRPI.

25 The TRIPS is one of the Multilateral Commercial Agreements that make up (as annexes) the Agreement that Established the World Trade Organization, adopted in Marrakech, Morocco on 15 April, 1994, and included in the Peruvian legislation with Legislative Order N° 26407 published on 18 December, 1994 and entered into force for Peru on 01 January, 1995.

attributed to the country members of the Andean Community, through Decision 689, discussed above.

In fact, Legislative Decree 1075, for example, included in our legislation the possibility of filing multi-class applications, i.e. an application for registration of a mark to distinguish products or services corresponding to one or more class of the International Nice Classification of Goods and Services. Similarly, this Decree stipulated that it was not necessary to register the mark licenses.

In turn, Legislative Decree 1075 establishes the criteria to determine whether or not two signs are alike; the criteria to determine the date when an application for registration was filed; and the issues related to the assignment of 'expected rights' from an application for registration; transfer of a registration; liabilities in case of mark licenses; the impact of rights of a mark, among other aspects.

It is important to mention that the enactment of Legislative Decree 1075 also aimed at adapting our domestic legislation to the Law Treaty (TLT). In this sense, it included the possibility of filing applications for multiclass registration, as mentioned above, and it includes the amendments regarding the prohibition to require burdensome formalities for applicants, such as legalized signatures and power-of-attorney. It is worth mentioning that such amendments entered into force even before such treaty became effective.

1.3.5. Administrative Procedures concerning Distinctive Signs

Regarding Distinctive Signs, the following procedures are worth mentioning:

a. Registration of Products or Services Marks

This procedure begins with the filing with the Department of Distinctive Signs of the application for registration of the mark regarding which applicant wishes to enjoy exclusive rights.

The application shall meet the minimum requirements stipulated under article 52 of Legislative Decree 1075 so that a Filing Date can be assigned²⁶. This date determines the preference (priority) to be given to the application for registration compared to other applications. For this reason during the first business days, the Department of Distinctive Signs analyzes the



formal aspects of the application to ensure that it meets the requirements stipulated by law. In any event, the DDS shall give applicant a term of 60 business days to cure any requirement. When this occurs, the filing date of the application for registration shall be the date when applicant has met all the requirements.

Once the examination of formalities of the application for registration has been completed, the DDS shall issue an order for the publication that must be done once in the Official Gazette El Peruano, and must be paid by applicant. This publication must be made within thirty business days, counted as from the day after the order of publication has been served.

Once thirty business days have lapsed from the date of publication, if no opposition has been filed, the DDS shall examine the conditions of patentability of the sign whose registration is sought and, by resolution, the DDS shall determine whether it has agreed to grant or deny registration of such mark.

Within fifteen business days of having been served with the Resolution in First Instance, the applicant may file any remedy of Appeal or Reconsideration. If the remedy of Appeal is filed, the case is sent to the Intellectual Property Court of Indecopi.

Finally, a contentious-administrative claim with the Judiciary can be filed against the Second Instance ruling.

26 Legislative Decree 1075

“Article 52.- Filing Date of Application for Registration

The filing date of an application for registration shall be the date when the competent Department received the application provides that at such time, the application contains at least the following information:

- a) State that the application concerns the request for registration of a mark;*
- b) Personal data of applicant or of person filing the application, or information which allows the Department to contact such person;*
- c) Mark whose registration is sought, or a reproduction of the mark in the event of denominative marks with words, special shapes or colors, or only graphic, or denominative and graphic with or without color; or a graphic representation of the mark when dealing with 3-D marks or a mark that cannot be perceived by sight;*
- d) Express indication of the products and/or services for which the registration of the mark is sought; and*
- e) Proof of payment of fees.*

Within fifteen (15) days counted as from the filing date of the application, the competent Department shall examine the application to determine whether or not it meets the requirements stipulated in this article.

If, as a result of such examination, the Department determines that the application fails to contain all of the requirements mentioned in this article, the competent Department shall ask applicant to complete such requirements within a term of sixty (60) days following the date the notice was given.

If requirements are completed within the abovementioned timeframe, the competent Department shall consider as filing date the date when all requirements were completed.

If the time established above lapses and applicant has failed to complete the requirements, the application shall be deemed not filed.”

b. Oposición

If a third party believes that an application for registration infringes his rights, he may oppose to such application within thirty business days following the publication of the notice in the Official Gazette *El Peruano*. Any motion for opposition shall meet the requirements stipulated in article 54 of Legislative Decree N° 1075²⁷.

Also, pursuant to the provision of article 147 of Decision 486, it is possible to file motions of opposition at an Andean level, i.e., oppositions based on trademarks registered or applied for earlier in any of the Member States of the Andean Community. In both cases, opposing party shall prove his true interest in the market of the Member Country where the opposition is filed and shall, at the same time, apply for the registration of the trademark²⁸.

Once the opposition has been filed, applicant shall be informed of such opposition within the following thirty business days so that applicant may file his response, i.e., submit his arguments and produce the evidence, if he so deems convenient. The competent authority for these cases is the Commission on Distinctive Signs.

²⁷ Legislative Decree N° 1075

"Article 54.- Opposition

The opposition shall meet the following requirements:

- a) Correct identification of the application;*
- b) Name and address of the person filing the opposition;*
- c) Power-of-attorney proving the appointment claimed;*
- d) Grounds supporting the opposition;*
- e) Offering of evidence to be produced;*
- f) Proof of payment of fees; and*
- g) When the opposition is against graphic, or denominative and graphic signs, opposing party shall attach an exact and clear reproduction thereof, as they were registered or applied for.*

²⁸ Andean Decision 486

"Art. 147.-For the purposes of the previous article, it shall be understood that both the owner of an identical or similar trademark, for goods or services in respect of which use of the other trademark would be likely to lead to confusion, and the person that first applied for registration of the trademark in any Member Country, have a legitimate interest in lodging objections in the other Member Countries. In either case, such opponents shall demonstrate real interest in operating in the market of the Member Country where they are filing an objection by applying for registration of the trademark at the moment they express their opposition.

If an objection is lodged on the basis of a trademark previously registered in any Member Country under the provisions of this article, the competent national office shall have the authority to deny registry of the second trademark. The filing of an objection based on an application for trademark registration previously filed in any Member Country under the provisions of this article shall result in the suspension of the registration of the second trademark until such time as the registration of the first has been conferred. In that event, the stipulations of the previous paragraph shall be applicable".



Once the term to file oppositions has lapsed and, if applicable, the term to answer them, the Commission shall render its opinion thereon and on the granting or denial of the application for registration of the mark by issuing a resolution (decision). As stated, this resolution may be challenged with a remedy of Appeal or Reconsideration.

c. Annulment of the registration of a mark

Article 172 of Decision 486 establishes that the annulment of the registration of a mark may be determined by the authority or upon request of any person and at any time if such registration was granted infringing the provision set forth in article 134, paragraph one and article 135 of Decision 486, i.e. the registration was granted despite incurring in an event of absolute prohibition for registration. For this reason, in these cases, we are in front of the so-called absolute nullity, which is not subject to any statute of limitation since such annulment can be declared at any time.

On the other hand, there is the relative annulment of a registered trademark when such registration was granted infringing the provisions set out under Decision 486 or when it was granted out of bad faith. Relative annulment is, however, subject to a timeframe of five years counted as from the date when the challenged registration was granted.

In addition, we need to distinguish between total and partial annulment of a registered trademark. In this sense, we are in front of partial annulment when the event for annulment only applies to one or several products or services for which the trademark was registered. Annulment shall only affect such products or services.

It is convenient to mention that the declaration of annulment of a registration will have retroactive effects; hence the annulment means that neither the registration nor the application had any effects²⁹.

In first instance, the competent authority to declare such annulment of registration is the Commission of Distinctive Signs. Once the application for annulment has been filed, the holder of the registration to present his arguments and evidence deemed convenient within two months of having been served with the notice. Interested party may request for an extension of the term for two additional months. Once these terms have lapsed, the Commission shall issue its opinion through a resolution³⁰.

²⁹ Cf. Article 8 of Legislative Decree 1075.

³⁰ Pursuant to the provision set forth under Article 173 of Decision 486, any request for annulment shall be subject to the procedure set forth under Article 78 of the said Decision.

Finally, it is worth mentioning that the motion for annulment shall be dismissed if the subject matter was affected by an opposition for the same arguments between the same Parties or any other Party whose rights derives from the former³¹.

d. Cancellation of Registration

Article 165 of Decision 486 provides that the registration of a trademark will be cancelled upon request of interested parties, when for no justified reason, the trademark was not used (lack of use) in at least one of the member countries of the Andean Community, by its holder, license holder, or authorized person during three years prior to the date of filing of the application for cancellation. This action of cancellation may also be requested as a means of defense in an opposition proceeding filed on the basis of an unused trademark.

No request for cancellation may be filed before three years have lapsed since the date of notification of the resolution completing the registration of a mark in the administrative instance.

Furthermore, it is worth highlighting that the cancellation of a registration of a mark can also be ordered if the holder has caused or allowed that trademark to become a common or general sign to identify or designate one or several products or services for which registration was granted. This cause is known as cancellation due to trademark becoming common ("*cancelación por vulgarización*").

The title holder of the trademark bears the burden of proof of the use of the mark.

In first instance, the Commission on Distinctive Signs is the competent authority to decide on the cancellation of a trademark. Once the request for cancellation is received, the Commission shall serve notice upon the holder of the registered trademark so that within a term of sixty business days counted as of the serving of notice, title holder may submit his allegations and evidence deemed convenient. Once the terms have lapsed, the Commission shall issue an opinion through a resolution.³²

31 Cf. Article 73, Legislative Decree 1075.

32 Cf. Article 170 of Decision 486.



Finally, it is worth highlighting that pursuant to the provision set out in Article 168 of Decision 486, the person who is benefitted with a resolution shall have a preemptive right to register the cancelled trademark. This right may be invoked with the submittal of the request for cancellation and within the first three months following the date when the resolution of cancellation becomes final in the administrative jurisdiction.

1.4. Case-law concerning Distinctive Signs³³

1.4.1. Introduction

This section includes summaries of a number of rulings issued by the Commission on Distinctive Signs of Indecopi since it was first established. Hence, in such decision, the administrative authority has developed its position regarding the different matters that have been brought before the Commission. Some of such topics are:

- The supplementary nature of a slogan.
- The examination of non-distinctive elements when comparing conflicting marks.
- The family of trademarks alleged by applicant as a defense argument in an opposition to an application for registration of a trademark.
- Assessing the history of registered trademarks when examining notoriety.
- The lack of distinctiveness as an assumption that does not result in the denial of registration of a slogan.
- Undue use of the symbol ® with a sign that has elements registered as marks.
- The examination of pieces of evidence submitted in a language other than Spanish.

This development is the result of the evolution experienced in the last few years in the realm of distinctive signs. Hence, the administrative authority has known how to answer to the market needs, which requires ever more sophisticated tools to make appropriate investment and consumption decisions.

³³ This section was written by Dante VILCHES LIVIA.

1.4.2. Summary of Case-law

a. The supplementary nature of the slogan

Judgment 1632-2009/CSD-INDECOPI:

Summary:

“Decision 486, article 175, provides a definition of slogan as meaning a word, phrase, or caption used to supplement a trademark and article 176 provides that the application for registration of a slogan shall specify the mark whose registration is sought or the registered trademark with which such slogan will be used.

In this case, the application for registration of the slogan is for it to be used as a supplement to a mark whose registration was denied to the same applicant.

[...]

In this sense, since the registration of the mark which the sign whose registration was sought intended to advertise had been denied, we are called to dismiss the application for registration of this slogan since it fails to meet a basic assumption established in Article 176 of Decision 486, i.e. the existence of a registered sign or a sign whose registration is sought. [...].”

b. The examination of non-distinctive elements when comparing conflicting marks.

Resolución N°2761-2009/CSD-INDECOPI:

Summary:

“[...] after performing a comparative examination between the sign whose registration is sought REACH TOTAL CARE and the registered trademarks TOTAL [...] and COLGATE TOTAL [...], without separating its graphic and phonetic units, we can conclude that such marks are not similar.

In fact, even when the sign whose registration is sought and the registered trademarks share the word TOTAL in their structure, the presence of the terms REACH and CARE in the sign whose registration is sought allow to distinguish it from the registered trademarks. Hence, we must add that although the term TOTAL is the only denominative element present in the trademark TOTAL [...], and it constitutes one of the denominative elements of the trademark COLGATE TOTAL [...]; this fact does



not determine its similarity since looking at the sign as a whole, both signs can be sufficiently distinguished between them.

It is worth pointing out that the denomination TOTAL present in the sign whose registration is sought is not alone but instead it is accompanied by the term in English CARE, whose meaning in Spanish is known by the general public. Hence, such terms together (TOTAL VARE) refer to a quality of the products it is intended to distinguish with the sign whose registration is sought –that such products allow to preserve and/or conserve in an integral manner the health of those who use them- such expression is perceived as meaning FULL CARE; therefore, it is not possible to establish exclusive rights upon them and its presence in the sign whose registration is sought cannot be considered as an element that allows to establish any similarity with the registered trademarks [...].”

c. The family of trademarks alleged by applicant as a defense argument in an opposition to an application for registration of a trademark.

Judgment 1626-2010/CSD-INDECOPI:

Summary:

“In this case, applicant claims being the holder of a family of trademarks. On this regard, authorized Spanish doctrine has stated that ‘this happens frequently when the shape of the registered trademark changes, the title holder does not apply for an amendment to the registration of such mark, but instead registers the modern version as a new trademark’³⁴. Hence, when an opposition to the application for registration is filed, it opposes, in turn, to the family of trademarks that it has previously established, since ‘as is well known, regarding the risk of confusion, the trademark family shall enjoy more intense legal protection than if considered separately’³⁵.

Our legal system, article 45 subsection e) Legislative Decree 1075, stipulates that ‘in order to determine whether or not two signs are similar and capable of leading consumers to confusion or error, the competent Department shall mainly take into

34 REAN LALIN, Manuel. (1985). El cambio de la forma de la marca. Contribución al estudio de la marca derivada. [Changes to the shape of the Mark. Contribution to a Study on Derived Marks]. Santiago de Chile, Instituto de Derecho Industrial de la Universidad Santiago de Compostela, p. 118.

35 AREAN LALIN, Manuel. (1985). Op.Cit., p. 119.

account the following criteria: [...]; e) if the sign is part of a family of trademarks.’ The drafting of such provision shows that it does not distinguish between the sign whose registration is sought and the one grounding the opposition. Following this line of reasoning, both applicant and opposing party may ground their defenses on a trademark family, which needs to be considered by the administrative authority when assessing the potential risk of confusion of the signs in question.”

d. Assessing the history of registered trademarks when examining notoriety.

Judgment 0131-2011/CSD-INDECOPI:

Summary:

“[...] although the applicant states that subsection k) of Article 228 of Decision 486 would prevent the opposing party from obtaining any protection due to the notoriety of the trademark CLARO since it is necessary for such trademark to have been sufficient seniority in Peru or in any other Member Country, this Commission has agreed to point out that such article stipulates the following:

DECISION 486

‘Article 228.- In order to determine whether a distinctive sign is well-known, due account shall be taken of the following criteria among a thing:

[...]

k) the existence and seniority of any registration or application for registration of the distinctive sign in the Member Country concerned or in any other country.’

On this regard, we can observe that the provision quoted does not list in any limitative manner, no exclusive manner, the factors that need to be considered by the Administrative Authority to determine the notoriety of a mark. In this sense, subsection k) Article 228, Decision 486 only lists another factor that may be taken into account to determine that a mark is notorious, plus compliance or failure to comply does not, in any way, condition such decision since notoriety as a dynamic institution in Trademark Law is not only limited to a given factor, but rather to the development of the trademark in the market. On the other hand, it is worth noting that the legal nature of notoriety does not establish any condition for its declaration to the registration of a trademark in the registers administered by the competent authority to declare such notoriety since this legal institution is one of the exceptions to the Principle of Registration and Recordation, as stated in this Resolution [...].”



e. The lack of distinctiveness as an assumption that does not result in the denial of registration of a slogan.

Judgment 327-2011/CSD-INDECOPI:

Summary:

"[...] The opposing party stated that the trademark whose registration is sought is not distinctive

[...]

On this regard, it is worth indicating that the prohibition for registration of marks devoid of distinctiveness is applicable only to marks, but not to trademarks since they have their own prohibitions for registration set forth under article 194 of Decision 486 abovementioned, hence the argument presented by the opposing party must be dismissed [...]."

f. Adequacy of means of evidence to prove the use of an slogan (part 1).

Judgment 2500-2012/CSD-INDECOPI:

Summary:

"The catalogs DUTY FREE DE AEROMEXICO, DUTY FREE DE MEXICANA and the magazine ESCALA DE AEROMEXICO, though they can prove the offering of the products identified with the mark N NIVADA and logo for passengers aboard the airlines AEROMEXICO and MEXICANA, pursuant to Article 7 of Law 27261³⁶, Civil Aviation Law, such on-board offering cannot be considered an act of offering within the national territory or the Andean Community; hence such documents are insufficient to prove that such products were placed in the market or that they are available in any of

³⁶ Law 27261, Civil Aviation Law:

"Article 7. Application of Foreign Law and Jurisdiction

The events, actions, and crimes occurring on board a foreign civil aircraft flying over the territory of Peru shall be subject to the laws of the State of registration of the aircraft, save for the following cases, which shall be subject to the laws and jurisdiction of Peru, when:

a) They affect security, safety, and public order in Peru, or
 b) Cause injury or harm to persons or damage to good in the territory of Peru."

the member countries. And even if effective marketing of some of the products offered in such catalogs is proven, such marketing shall be understood to have been made in the State of registration of aircraft, in this case, in Mexico –a country which is not a member of the Andean Community.”

g. Opposition based on a registered trademark in a country member of the andean community against an application for registration of an slogan.

Judgment 2486-2012/CSD-INDECOPI:

Summary:

“[...] article 147, Decision 486, stipulates that both the owner of an identical or similar trademark, for goods or services in respect of which use of the other trademark would be likely to lead to confusion, and the person that first applied for registration of the trademark in any Member Country, have legitimate interest in filing oppositions in the other Member Countries. This provision further stipulates that opposing party shall demonstrate real interest in operating in the market of the Member Country where they are filing an opposition by applying for registration of the trademark at the moment they express their opposition.

In this case, we must note that although we have confirmed that the opposing party is the holder of the registered trademark AVECAMPO and logo (Certificate 2380-05) in Ecuador, it may not be opposed to the application for registration by operation of Article 147 of Decision 486. In fact, this provision governs the Andean opposition, which is an event of exception which is limited only to the case of oppositions made on the basis of applications for registration of trademarks or registered trademarks in any Member State of the Andean Community. In this case, this article cannot be applied in the following cases: (i) applications for registration of any other distinctive sign other than a mark; and (ii) oppositions made on the basis of any other distinctive sign other than a mark.

Following this line of reasoning, Article 147, Decision 486 cannot apply to this case since this opposition is based on a registered trademark in a Country Member of the Andean Community against an application for registration of a slogan [...].”



h. Undue use of the symbol ® with a sign that has elements registered as marks.

Judgment 2514-2012/CSD-INDECOPI:

Summary:

“After reviewing the records of the Department of Distinctive Signs, we notice that the sign [...] used by Respondent is nor and was not registered with the Indecopi Department of Distinctive Signs to distinguish the products of class 03 of the International Classification.

On this regard, it is worth pointing out that if Respondent alleges that [the sign used] is registered [...], it is a denominative mark, while, in this case, the place where the symbol ® is located leads us to infer that the mark would be registered in favor of Respondent would consist not only of the denomination [...] but also of the additional graphic and color elements, thereby consisting of a denominative and graphic element different from the trademark, which –as mentioned in the foregoing paragraph- is not registered.

In this sense, the Commission believes that the use of the denomination [...] and logo, accompanied by the symbol ® infringes the provision set out under the Second Supplementary Final Provision of Legislative Decree 1075.

Consequently, it has been determined that they have incurred in an infringement to the industrial property rules by using the symbol ® net to the sign that was not registered with the Indecopi Department of Distinctive Signs [...].”

i. Adequacy of means of evidence to prove the use of slogan (Part 2)

Judgment 2524-2012/CSD-INDECOPI:

Summary:

“[Although] invoices [...] include the name PERULAB SA. in the upper left hand corner, they are not adequate means of evidence to prove the use of the trade name alleged since by reading the contents of such invoices, it is possible to notice that the products listed have been transferred free of charge, hence they do not prove that the opposing party performs economic activities related to the trading of products in classes 05 and 10 of the International Classification using the sign PERULAB SA. [...].”

j. The examination of pieces of evidence submitted in a language other than Spanish.

Judgment 3610-2012/CSD-INDECOPI:

Summary:

“Applicant [states that] in connection with the means of evidence submitted by the opposing party [...] they ‘do not meet the admissibility requirements required by law; hence, the authority cannot take into account the documents written in English [...]. In this sense, if we apply by way of supplement and as far as applicable the provision set forth under article 241 of the Civil Proceedings Code, we can conclude that the documents submitted must be dismissed”.

On this regard, the opposing party has pointed out that it is not compelled to submit a translation into Spanish of the means of evidence submitted in English since pursuant to Article 8 of Decision 486, the competent national office may excuse the submittal of translations of documents when it is so deemed convenient. Therefore, since there are rules governing the registration proceeding of marks, we should not resort to supplementary laws.

Article 13 of Legislative Decree 1075 states the following:

LEGISLATIVE DECREE 1075

Article 13.- Language

Applications for registration shall be filed in Spanish. Documents written in a foreign language shall be accompanied with a ‘simple translation’ in Spanish. The submittal of official, certified translations shall not be required; it shall suffice for the translator and the interested party to assume liability for such translation.

Notwithstanding the foregoing, competent authority may excuse the submittal of translations of documents when it so deems convenient, or request a translation within a maximum term, not subject to expansion, of ten business days, unless otherwise stipulated by this Legislative Decree.’ (Emphasis added by the Commission).

[...] the Commission on Distinctive Signs of Indecopi has the power to excuse the parties from submitting translations of the means of evidence that have been offered within the cases it is entitled to settle. This excuse shall be dependent upon the nature of the evidence, the content and purpose pursued with the proceeding in which they are produced; such evidence need to be examined and referred to in the resolution to be rendered by the Commission when weighing the means of evidence [...].”



1.5. Collective Marks³⁷

1.5.1. Definition, Advantages, and Requirements of Collective Marks

Collective Marks are distinctive marks that identify the origin or any other common feature of products or services that belong to a group or association, distinguishing such products or services from those manufactured or delivered by non-member third parties; the title holder of the mark is the organization itself.

Hence, collective marks are signs adapted by a collective entity, for example an association of producers, manufacturers, or any other grouping of individuals lawfully incorporated and which serves to distinguish the products or services manufactured or rendered by the members of the association.

A collective mark may consist of any element used to identify a product as originating from a given geographic location, when a given quality, reputation, or other feature of the product is attributable to its geographic origin³⁸.

Collective marks are different from products or services marks in that the latter are used to distinguish products or services attributed to a specific person or company regarding the products/services of all other companies present in the market; while collective marks are signs that can be used by several persons or companies provided that, however, such individuals or companies are members of the association holding the trademark and that they follow the usage guidelines therefor.

The advantages offered by collective marks compared to the individually-held marks are the following:

- Manufacturer or producer jointly face the market; thereby requiring a common strategy.
- The mark is exploited and promoted by several persons or companies that are members of the association.

³⁷ This section was written by Verónica PEREA MÁLAGA.

³⁸ Article 77 of Legislative Decree 1075.

- The common use of a mark forces members of the association to standardize product/service quality and the features of the products bearing the marks.
- Using a collective mark does not prevent the use of own or separate marks.

In order to obtain the registration of a collective mark, there are additional requirements to be fulfilled. In addition to the formal requirements established for any other mark whose registration as a distinctive sign is sought, collective marks shall meet the following special requirements:

- To be an association, organization, or group of persons enjoying legal recognition.
- To submit a copy of the bylaws of the association or organization applying for the registration.
- To submit the list of individuals who are members of the association or organization and who, consequently, are authorized to use such collective mark.
- To submit the usage guidelines for collective mark.

The usage guidelines for collective mark consists of the rules set out by the holder of the mark and which have to be followed by those who wish to use the collective mark. The usage guidelines for collective mark are a very important instrument since it defines the features that the products or services bearing such collective mark will have. This is why it needs to be registered along with the mark.

In general, usage guidelines for collective mark contain the following:

- Name of applying organization.
- Object of the Usage Guidelines.
- Indicate collective mark and expressly list the products or services such mark will distinguish.
- The mechanisms by which other persons may, in the future, join the association or organization.
- Technical features and quality of products or services.
- Use conditions for the collective mark.
- Supervision mechanisms to be implemented in order to monitor the collective mark to be used as set out in the usage guidelines.
- Penalties to be imposed upon members of the association or organization for failing to meet the usage conditions or the technical features or quality expected of products or services.



It is worth noting that once the collective mark has been registered, the competent national authority, i.e. the Indecopi Department of Distinctive Signs, shall be informed of any amendment to the usage guidelines. Such amendments shall become effective for third parties once they have been recorded with the corresponding register.

Collective marks may be transferred or given under licenses pursuant to the organization's internal rules. Such acts shall be registered with the competent national authority.

1.5.2. The Work of the Department of Distinctive Signs

The State is called upon to promote the country's competitiveness. To this end, it is necessary to encourage entrepreneurs not only in urban areas but especially in the rural areas of the country which are the areas requiring greater support. This task contributes to the development of poorer areas and constitutes an effective way of implementing true social inclusion.

It is in this context that Indecopi, as the competent national authority on intellectual property realized, with the support of experts from the Department of Distinctive Signs, that collective marks were the most appropriate way to support rural entrepreneurs.

For this reason, the Indecopi Department of Distinctive Signs (until July 2008, the Distinctive Signs Bureau) has been working on disseminating collective marks. However, since the Central Government ordered austerity measures for all public administration agencies, it became very difficult for Indecopi to continue with the dissemination tasks especially in the rural areas. In this context, Indecopi sought for allies that could help in implementing this task.

1.5.3. Indecopi – AGRO RURAL – UNIDO Alliance

Aware that Peruvian rural entrepreneurial ventures require not only support from Indecopi but also comprehensive solutions, Indecopi reached out to the Rural Agricultural Productive Development Program (AGRO RURAL) [*Programa de Desarrollo Productivo Agrario Rural - a national rural development program*] and to the collaboration of the United Nations Industrial Development Organization (UNIDO).

In January 2011, Indecopi and AGRO RURAL signed an agreement whose goal is to set the guidelines, tools, mechanisms to be used to initiate, govern, and develop the collaboration

between Indecopi and AGRO RURAL in view of promoting and generating the conditions in order to instill a culture for the protection of all forms of intellectual property as well as to encourage competitiveness of the national economic players in the Peruvian market by standardizing the rural sector of Peru.

Subsequently, Indecopi marshaled the support of the United Nations Industrial Development Organization (UNIDO) and established the Indecopi-AGRO RURAL - UNIDO Alliance. The Alliance has prepared a joint national work plan called: "Alliance for the promotion of Collective Marks as a Tool for Rural Development."

The general objective of the Alliance's work plan is to promote knowledge management in view of building management technical capacities and strengthening the use of collective marks as tools for rural development, improving competitiveness of rural agricultural entrepreneurial ventures. Efforts are addressed to professionals, technical staff, and users of AGRO RURAL in alliance with Regional and Local Governments and institutions related to this industry.

Specific objectives:

- To build capacities of officials of Regional and Local Governments, professionals working in the AGRO RURAL Zone Directorates and Agencies and institutions related to the rural sectors and rural producers regarding collective marks as tools for rural development.
- To design strategies to implement pilot productive projects, which will be chosen through contests.
- To accompany and provide assistance to pilot projects in the implementation of the tool.
- To draw lessons learned from the implementation of the work plan.

1.5.4. Activities Performed by Indecopi – AGRO RURAL – UNIDO Alliance

a. Train Facilitators on Collective Marks Workshop

In September 2011, the Alliance held the "Train Facilitators on Collective Marks Workshop," which was originally organized for 50 participants. Given the successful response to the call, vacancies and budgets were increased. In all 96 participants attended the 3-day workshop.

In fact, 96 persons from different regions of Peru attended the workshop, among them officials, professional and technical staff representing institutions working in the agricultural industry in the rural areas of Peru.

As a result of this workshop, participants presented 16 proposals or projects concerning collective marks. These proposals/projects were analyzed by an evaluation committee comprising representatives of the three organizations members of the Alliance. Out of the 16 proposals/projects, the ones listed below were chosen and the Alliance provided technical and legal support during 2012.

Table No 1
Proposals chosen from the “Train Facilitators on Collective Marks Workshop”

Title of Proposal	Region	Sponsoring Institution/ Agency	Person making the proposal
Tallarín de casa abanquino [Homemade Noodle from Abancay]	Huancavelica	Agro Rural Abancay Zone Agency	Oscar Pinelo Chumbe, Eng. Mr. Alejandro Espinoza Vásquez Apurímac Zone Directorate
Native Potatoes From the Acobamba Province, Huancavelica Region	Huancavelica	Native Potatoes Technical Table for the Acobamab Province, Huancavelica Region – Care Peru Huancavelica	Odon Zelarayan Muñoz, Eng. Native Potatoes Project Care Peru - Huancavelica
Native Cotton from Lambayeque	Lambayeque	Cámara de Comercio de Lambayeque, con la Mesa Técnica del Algodón Nativo	Billy Maco Business Unit Advisor Lambayeque Chamber of Commerce.
Native Honeybee derived from the Dry Forest of Lambayeque.	Lambayeque	Lambayeque Chamber of Commerce, Native Honeybee Technical Table of the Region	Billy Maco Business Unit Advisor Lambayeque Chamber of Commerce.

We also presented the actions implemented by the Alliance in the event: “Launching and dissemination of guidelines and tools generated in the Rural Association and Agricultural Quality Management Component to be applied in the AGRO RURAL scope of action,” held on 19 December, 2011.

The purpose of this event was to disseminate the actions carried out within the rural association and agricultural quality management component in 2011. In the meeting, we presented the Indecopi- AGRO RURAL agreement and the joint work plan for Appellation of Origin of Giant White Maize of Cusco and collective marks.

b. Macro Regional Workshops

Between March and April 2012, we carried out a number of Macro Regional Workshops called: “Alliance for the promotion of Collective Marks as a Tool for Rural Development” in four regions of Peru:



- **Apurimac (March 06 & 07)**

The workshop was held in the city of Abancay and was welcomed warmly. We had originally planned to receive 50 to 70 persons, but we managed to count with an attendance of 100 persons representing the Regional Government of Apurimac, the Municipality of Apurimac, universities, Sierra Exportadora, PROMPERU, Apurimac Chamber of Commerce, AGRO RURAL, and Association of Producers from the Departments of Apurímac, Cusco, and Ayacucho.

Some of the participating producers were: Aniseed from Curahuasi, Cacao Chuncho from Calca (Cusco), Hass or Fuerte Avocado from Apurímac, Native Potatoes from Kishuara, among others. In addition, we prepared an area for producers to exhibit their products: coffee, aniseed, cheese, yogurt, bread, quinoa, avocado, Homemade Noodle from Abancay, etc.

After the Macro Regional Workshop, we held a working meeting with the producers of Homemade Noodle from Abancay and representatives from AGRO RURAL, The Provincial Municipality of Abancay, the Apurimac Chamber of Commerce, Belgian Technical Cooperation (BTC), including visits to a couple of shops to Homemade Noodle from Abancay.

- **Arequipa (March 20 & 21)**

The workshop was held in the city of Arequipa and was also welcomed warmly. We had an average of 120 participants representing Local Governments, universities, Sierra Exportadora, PROMPERU, AGRO RURAL, and Association of Producers from the Departments of Arequipa, Puno, Moquegua and Tacna.

Some of the participating producers were: red onion from Arequipa, dairy-derived products from Colca (Arequipa) and Puno; Cabanito maize from Cabanaconde (Arequipa); oregano from Huamba, Cerro Colorado, and Yura (Arequipa), Moquegua and Candarave (Tacna); red cheese from Colca (Arequipa); among others.

- **Lambayque (March 27 & 28)**

The workshop was held in the city of Chiclayo, in the Auditorium of the Sipan Royal Tombs Museum, counting with the participation of over 100 persons.

- **Junin (April 10 & 11)**

The workshop was held in the city of Huancayo, counting with the participation of over 100 persons representing Local Governments, Caritas, Care Peru, Programa Aliados, universities, Sierra Exportadora, PROMPERÚ, the Chanchamayo Chamber of Commerce, AGRO RURAL, and Producers Associations from Junín, Cerro de Pasco, Huancavelica, Huánuco, and Huancavelica.

Some of the producers present are in the business of producing: elderberry, peach, peach pulp jams from Huanuco; maize from Tarma; coffee and Sacha Inchi Oil from Chanchamayo (Junín); dairy-derived products from the province of Castro Virreyña, textile handcrafts from Yauli (Huancavelica), among others.

In addition, we took the opportunity to make a working visit to the native potato growers of Acobamba in Huancavelica. The meeting was held in the Auditorium of the Paucará District Municipality (Acobamba Province, Huancavelica Region). The meeting counted with the attendance of approximately 40 persons, including associations of native potato producers and representatives of AGRO RURAL, the Agricultural Agency the Ministry of Agriculture, the Paucará District Municipality, the Acobamba Provincial Municipality, the Huancavelica Regional Government, and representatives of the Huancavelica Technical Table of producers, and representatives of DESCO and Care Peru, the latter two institutions were working in organizing the producers, improving their products and market research.

The meeting noted that in the Acobamba province there are approximately 500 native potato producers, who are organized into twenty associations of producers which, in turn, form a confederation of native potatoes and seeds growers; these products are greatly appreciated in different parts of the country such as Ayacucho. Some of the most salient native potatoes are camotillo, purple potatoes, pink potato, 'bull blood' potato, among other varieties.

It should be noted that many of the native potato producers are Quechua speakers, which made working with them much more challenging but interesting. We counted with support from Care Peru's bilingual staff who provided the translation.

The purpose of these Macro Regional workshops was two-fold: to reinforce the work carried out with selected products during the previous year and to identify new products eligible for legal and technical assistance by the Alliance.

c. Publication of Support Material

In order to work on the issue of collective marks in these workshops, with the support of the Alliance, we prepared special material for the rural producers. This material includes simple explanations on collective marks describing advantages. All material was published in a handbook called: How to create your collective mark.



d. Latin American Seminar on SME Export Consortia

Further, in April 2012, we were invited by Ecuador to participate in the Latin American Seminar on SME Export Consortia, organized by the LATIN AMERICAN AND CARIBBEAN ECONOMIC SYSTEM (SELA) and UNIDO; the event was opened by Kandeh Yunkella, Director-General of UNIDO, along with the Ecuador Minister of Production, Verónica Sion.

In this seminar, we presented our experience in managing collective marks and the progress we have achieved with the Alliance so that our program can be replicated in Ecuador.

In this regional workshop, we not only talked about the activities of the Alliance but we also positioned our institutional image as the national competent body on intellectual property.

e. Miscellaneous Workshops and Meetings

Later, and as a result of the interest generated by the Macro Regional Workshops, we have carried out other workshops focusing on specific areas, such as Huancavelica and Puno.

- **Huancavelica (May 07 & 08)**

On May 7, we met with representatives of Care Peru and AGRO RURAL, members of the Native Potato Technical Table, in order to provide information about collective marks and how to register them.

On May 8, we held a workshop with the participation of about 40 persons, including representatives of AGRO RURAL from the Ministry of Agriculture, Programa Aliados, Care Peru, and Huancavelica Producers Associations.

Some of the producers present are in the business of: native potatoes (the highest yielding crop in the region), trout, dairy-derived products (especially cheese), handcrafts, and apparel made of alpaca wool.

- **Puno (August 07, 08 & 09)**

We held a total of three workshops in three towns: El Collao, San Román, and Huancané.

The first workshop was addressed to local authorities, quinoa and chenopodium pallidicaule producers and producers cooperatives in El Collao Province (Ilave), counting with an average of 60 participants.

The second workshop was addressed to local authorities, quinoa and chenopodium pallidicaule producers and producers cooperatives in San Roman Province (Juliaca), counting with an average of 20 participants.

The third workshop was addressed to local authorities, quinoa and chenopodium pallidicaule producers and producers cooperatives in Huancané, Azángaro, Carabaya, Moho and San Antonio de Putina Provinces, counting with an average of 40 participants.

- **Lambayeque (August 21 & 22)**

We held meetings with honeybee producers from dry forests and native cotton producers in view of building their capacities on collective marks and providing technical assistance on based on the nature of each product. The picture below shows honeybee producers examining the density of honey.

Also, we continued to work with selected products, performing visits to the production areas with which we have been working on collective marks to verify the production and availability of the products and the actions of the producers organization, in coordination with the operators of other various institutions providing support in the regions.

We also held permanent technical meetings with the Indecopi - AGRO RURAL - UNIDO Alliance team to determine the activities and strategies to be considered or implemented.

f. Official Launching of the Indecopi - AGRO RURAL - UNIDO Alliance

On 05 September, 2012, in the Indecopi facilities, the Indecopi - AGRO RURAL - UNIDO Alliance held a press conference to officially announce the Alliance and the achievements accomplished so far. The press conference was attended by the AGRO RURAL Executive Director, the Vice Minister of Agriculture, and the Chairman of the Board of Indecopi, along with other authorities and media.



The first results of the Alliance were also presented: the products we have been working with and the different components (structure, quality standardization, collective marketing)³⁹:

- “La Reina de Olmosa” [The Queen of Olmosa], groups over 150 honeybee producers grouped into 16 organizations in the districts of Morrope, Olmos, and Salas, Lambayeque Region.



³⁹ Information obtained from the “Report on the Launching and Participation in the Mixtura Fair of the products comprised in the Colelctive Marks program” prepared by AGRO RURAL.



- “Doña Mica” [Ms. Mica], groups over 50 Homemade Noodle from Abancay producers grouped into 11 organizations in the province of Abancay, Apurimac Region. *Homemade Noodle from Abancay* is the main business creating jobs and accounting for financial revenue.

- “Utku Muchik” groups over 21 women involved in handcraft production grouped into 2 organizations in the district of Túcume, Lambayeque Region. Women have found weaving with traditional looms an alternative way of making a living since this enables them to develop their traditional customs and, at the same time, improve the financial life using local raw materials such as native cotton using the 11 natural colors.



- “Sumac Sonqo” groups over 500 native potato producers from 27 communities in the districts of Paucara, Andabamba, Rosario, Acombamba, Province of Acobamba, Huancavelica Region. These native potatoes are planted from 3,500 to 4,200 m.a.s.l. and this production area is considered the custodians of native potatoes since they count with over 350 varieties.

- “Aymanto” groups over 27 families in the district of Shilla, Ancash Region. *Physalis peruviana* ('aguaymanto') grows on the foothills of snow-capped peaks of Huascarán and Hualcan and is watered by the crystal waters trickling from snow-capped peaks 2,750 m.a.s.l.





We also took this opportunity to show the materials produced by the Alliance:

- Handbook about collective marks, which was handed out to all producers in the workshops sponsored by the Alliance.
- Brochure informing about the Collective Marks National Program in order to disseminate the activities of this program.
- Technical Data Sheets and Product Sheets for the five products that we have been working with in the collective marks program to be handed out in future events.

g. Participation on 2012 Mistura Gastronomy Fair

The Indecopi-AGRO RURAL-UNIDO Alliance put up a stand in the Big Bazaar of the Fifth Mistura Gastronomy Fair- 2012. This stand allowed us to show the four products selected. These products were promoted during the 10 days of the fair, allowing producers to offer their products and establish commercial contacts, while allowing consumers to learn a little bit more about the special features of these products and the history of such products first hand –from producers themselves.

Participation of the Indecopi-AGRO RURAL-UNIDO Alliance was broadly disseminated through the social networks and media. We prepared a video which can be downloaded from the Indecopi official channel [[www.youtube.com \(http://www.youtube.com/watch?v=C1SGS WwsSok&list=PL2046073BF3E67D85\)](http://www.youtube.com/watch?v=C1SGS WwsSok&list=PL2046073BF3E67D85)].

1.5.5. First Results

All the effort made by the Alliance so far has reaped results not only for the abovementioned products that participated in the 2012 Mistura Fair but also managed to train about 600

producers and as a result of the workshops held throughout 2012, new products have been selected to work on the next stage of the project.

These products are:

- Quinoa (Puno Region).
- Mushrooms (Lambayeque Region).
- Fresh cheese/ pound cheese (Junín Region).

The inclusion of quinoa as one of the products to be worked in the next stage of the project is particularly important considering that 2013 has been declared the "International Year of Quinoa". In fact, Indecopi is part of the National Multisectoral Commission for the International Year of Quinoa. The Department of Distinctive Signs represents Indecopi in this commission.

The products shown at 2012 Mistura are a first sample of the work of the Alliance with the producers that make up each of the associations driving such products, which received the tools we have been able to give them and which have begun to use them for the benefit of their families and their communities.

1.6. Appellations of Origin in Peru⁴⁰

In a global market, mass production, where technology is the main ally of the production processes of companies, we interestingly observe that, in recent years, there has been growing interest in traditional local products and, among them, specifically for those with special features, mainly due to its place of production and traditional methods of cultivation, preparation or processing; these factors -finally- turn them into unique products.

These products, due to their uniqueness, portray the peoples of the places they come from, tell us their story, and become not only important mechanism to perpetuate local traditions, but also business opportunities.

In fact, the combination of the factors of distinction-origin-quality, coupled with appropriate marketing strategies, can open markets and ensure consumer preferences.

However, legal protection is also required. If a name that identifies a product that is characteristic of a specific area is used by any producer that has no link with that

⁴⁰ This section was written Patricia GAMBOA VILELA.



geographical area, and does not respect traditional or artisanal processes that earned the reputation the product, the geographical origin-quality association would gradually fading and the name associated with the product would ultimately lose its prestige.

Hence, the need to ensure that only the products that actually come from a given geographical origin and which have the special features corresponding to that place use the name to advertise such products. A response to this need for legal protection is provided by Industrial Property through the figure of Appellations of Origin.

1.6.1. Conceptual Delimitation

In conceptually defining the notion of appellation of origin, we must start by pointing out that it is a distinctive sign, i.e. a business tool which –like trademarks and other distinctive signs, is used in trade to identify or differentiate products, and to serve as a source of information for consumers as they make their purchasing decisions.

The peculiarity of the appellation of origin compared to the other distinctive signs is that (i) it is a distinctive sign which includes in its composition the name of a geographical location or a name that refers to a geographical location, and (ii) it is used for products that have special features which are actually due to the fact of having been extracted or produced in that geographical location.

In other words, in the case of the appellation of origin, we are facing a distinctive sign which reflects the close connection between the product and the geographical location of production or extraction; this connection is determined by the fact that the characteristics of the product are essentially due to the place of production or extraction and therefore, in turn, the corresponding geographical name is used to designate the product.

In addition, we note that not all signs involving or consisting of the name of a geographical location can be considered as appellations of origin. In order to be considered as such, there must unavoidably be the already mentioned link between the characteristics or quality of the product and the given geographical location.

However, we must not forget that, as in the case of other distinctive signs, we are facing a figure whose conceptual definition and scope is defined legally. In that sense, it is the

legislation of each country which defines what is meant by appellation of origin⁴¹, and so the concept may vary from one legislation to another. Next, we will explain how the notion of appellation of origin is stipulated in the current regulations in Peru.

1.6.2. Legal Framework – Overview

Peru is a member of the Andean Community of Nations (CAN), along with Ecuador, Colombia and Bolivia, and, therefore, the provisions of the Andean Community on industrial property govern these four countries.

The existing Community legislation is Decision 486 of the Andean Community Commission, which sets forth the Common on Industrial Property Regime. This standard is supranational, i.e. to be directly and immediately applied by the four CAN Member Countries and is also prevalent over any domestic legislation of Member Countries.

Under the Andean integration legal system, Member Countries can pass under domestic laws provisions supplementing those of the Community legislation. In Peru, the national law applicable to industrial property is Legislative Decree 1075, which has approved Supplementary Provisions to Decision 486 of the Andean Community Commission which established the Common Intellectual Property Regime. This rule, which became effective on February 1, 2009, was issued in the context of the legislative implementation of the commitments made in the Peru - United States Trade Promotion Agreement (PTPA), and in full accordance with Decision 689 (rule adjusting certain articles of the Decision 486 - Industrial Property Common Regime, to enable the development and deepening of Industrial Property Rights through the internal regulations of Member Countries).

It should be highlighted that, at a national level, in 2004, we passed the regulations on the Regulatory Councils, namely Law 28331, Framework Law on Regulatory Boards for Appellations of Origin. The main aspects of this regulation will be explained later.

At an international level, as a member of the World Trade Organization, Peru is a member of TRIPS. Also, in 16 May, 2005, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration entered into force in Peru.

⁴¹ The legislation of each country establishes the protection mechanisms, the requirements for their recognition, and the scope of protection, among others.



Peru has also been very active in bilateral trade negotiations, having concluded treaties that include the subject of industrial property and, specifically, provisions on geographical indications or appellations of origin⁴². Hence, Peru has concluded the Trade Promotion Agreement with the United States of America, the Trade Integration Agreement with Mexico, and Free Trade Agreements with Canada, Singapore, China, the EFTA countries (Switzerland, Norway, Iceland, and Liechtenstein), with the European Union, Japan, Costa Rica, and Panama, and the Free Trade Agreement with South Korea.

a. Definition and elements

The definition of Appellation of Origin stipulated in Decision 486 is based on the one provided in the Lisbon Agreement, which states under Article 2, paragraph 1):

“In this Agreement, “appellation of origin” (...) means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.”

Hence, the definition stipulated under article 201 of Decision 486, states that:

“In this Agreement, “appellation of origin” means the geographical denomination of a country, region, or locality, or consisting of a denomination which is not a country, region, or locality but refers to a given geographic area, which serves to designate a product originating therein, the quality, reputation, or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.”

Analyzing the foregoing provisions, we can extract what are the elements that, according to our legislation, make up an appellation of origin. Such elements are:

⁴² A position that is somewhat extended is one that believes that the appellations of origin are a species of “geographical indications”. In this regard, it should be noted that although both figures are mainly aimed at telling consumer and the market about a quality linked to the geographical origin of the products, in the legislation of some countries and in some international regulatory bodies, they differ on the elements that can make up the signs, as well as the application and protection requirements conferred. In the case of Peru, only the figure of appellations of origin is considered.

- **Geographic Location**

The sign which purports to be protected as an appellation of origin should consist of the name of a geographical location, or a name which is not the name of a geographical place but unquestionably refers to a given geographical location. This latter case is known as "traditional appellations"⁴³.

Hence, the Andean legislation is more flexible than those of the Lisbon Agreement, which considers that the appellation of origin may consist of the name of the given place, according to the national map of the country in question, or the name which, while not the official name is used to refer to a specific place or refers to a given location.

On the other hand, it is worth noting that the Andean legislation, like the Lisbon Agreement, includes the possibility for the appellation of origin to consist of the name of a country, and not just the name of a region, state or area within a country.

Finally, we should note that the appellation of origin must consist of the name of the geographic location or name given to the given place. Thus, we can mention as examples the name "COGNAC", which exclusively consists of a geographical name.

It can also take the general product name, as is the case of the appellation of origin: "COLOMBIAN COFFEE", which includes the general term "coffee" and the name of the geographical location: "Colombia". No other element is possible.

- **The geographic name is used to identify a product**

The appellation of origin is a distinctive sign which can only be used in connection with products, unlike other distinctive signs that can refer to both products and services.

Also, it is pertinent to specify that, under current Peruvian legislation, the appellation of origin can be applied to any type of products, unlike other legislations that limit the use of appellations of origin exclusively for agricultural products⁴⁴. In Peru, this breadth has allowed, for example, to recognize as an appellation of origin the sign "CHULUCANAS," which is used for "ceramics", as discussed below.

In addition to what we have already mentioned, we must say that in order to use the concept of appellation of origin, the product concerned must be known or designated

43 At an international level, we can mention by way of example of traditional appellations of origin the word "FETA" that identifies a cheese of Greek origin.

44 This is the case of the European Community legislation.



on the market with the name of the geographical location in which it is produced, extracted, or manufactured, as applicable. In other words, they must prove that in trade in the related sector, the name of the geographical place is used to designate that product.

- **The product special characteristics are due exclusively or essentially to the geographical environment**

Now, as we have noted above, it is not sufficient for the name of the geographical location to be used to refer to the product but, in addition, it must prove that the product in question has special characteristics that differ from others of its kind, and that these characteristics are "solely or mainly" due to that geographical area, including natural and human factors, in which they are extracted, grown or produced. This element is essential and determines that a product with an appellation of origin can only be prepared or produced in that geographical area. If the product was manufactured or produced in another area, it cannot bear the appellation of origin⁴⁵. Thus, we can conclude to this point that in order to establish whether or not we face possible appellations of origin, it is not enough for the product to be known or designated with the name of a geographical place, but there should also be a close bond between the product and the geographical location. Hence the importance of conducting a technical study to show that the special characteristics of the product are due to the given area, including not only the natural factors (soil, climate, and so on.), but also human factors (such as traditional way of development or production). This technical support is part of the so-called "specification" to be presented as part of the application for protection of an appellation of origin in our country, as we will discuss later.

⁴⁵ This is an important difference between the marks/trademarks and appellations of origin. Thus, in the case of trademarks, the holder can, for various reasons, manufacture his products in different locations and identify them all with the same brand (e.g. the case of the brands Nike, Adidas, Reebok, and so on). In the case of the appellation of origin, to the extent that the declaration of protection of an appellation of origin is based on the link between the characteristics of the product and the geographical location, the product can only be manufactured or produced in this place, otherwise, it cannot bear the appellation of origin recognized.

b. Application Procedure:

- Specifications

A key aspect which should be available before initiating the appropriate administrative procedure is the "specification" or "Technical file", which should basically contain the following:

- Product identification and features

The product which will use the appellation of origin shall be clearly identified. Thus, for example, it is not enough to say it is "coffee;" it is necessary to specify whether it is "green bean," "roasted coffee," or "roasted and ground coffee." This is important. When the appellation of origin is registered, the protection and control schemes to be established, and the use of the appellation of origin in the market, shall be limited to the product that was specifically recorded. Once the product has been determined, it is necessary to include information about its physical, chemical and/or organoleptic features, as applicable.

- Description of inputs used and farming, preparation or production process

The goal of the administrative procedure concerning the Statement of Protection of an appellation of origin is to confirm existing circumstances, not to develop something new. In this sense, the specifications must document traditional methods or processes that are being used to farm or process the product concerned.

Thus, in preparing this information, it is essential to count with the involvement of producers because they are the ones who know the methods and practices used to obtain the product. Moreover, since the specifications will later serve to establish the quality standards to be met by a product in order to be eligible to bear the appellation of origin, the producers themselves should be the ones who, taking into account their capacities and resources, set those standards. To sum up, the description of the inputs and processes should refer to "what is" and not to "what should be," because the goal is to preserve traditional uses and not to develop new production processes.

- Demarcation of the geographical area

Since the appellation of origin accounts for the existence of a close link between the product characteristics and the geographical environment from which it came, it is important to demark the geographical area.

On this regard, it should be noted that natural or human factors of the geographical environment do not necessarily coincide with the geopolitical boundaries. In other



words, factors such as height, moisture, or soil characteristics can cover more than one district, province or region, or even the entire country.

Hence, it is possible for the demarcated geographical area to be bigger than the one corresponding to the geopolitical boundaries. This happens, for example, in the case of the appellation of origin "PISCO" which, from the geopolitical point of view, corresponds to a province in the department of Ica. However, the geographical area demarcated to use this appellation of origin covers the coastal valleys of the Departments of Lima, Ica, Arequipa, Moquegua and three valleys in Tacna (Sama, Locumba, and Caplina).

We also found cases in which the geographical area determined for the appellation of origin is smaller than the one corresponding to the geopolitical demarcation. For example, the appellation of origin "LOCHE LAMBAYEQUE" includes the name "Lambayeque" which is actually the name of one of the Departments of Peru. However, the geographical area demarcated for the above appellation of origin comprises only some of the locations within the Department of Lambayeque.

The demarcation of the geographical area is also important in order to control and monitor the use of the appellation of origin, since the appellation of origin can only be used by producers in that area provided, of course, that they meet the other conditions (features, inputs, production processes, and so on.) established for the appellation of origin.

- Technical Support of the link between the product features and the geographical environment.

The idea behind this requirement is for a technical study to prove that the product whose registration is sought as an appellation of origin has special characteristics that are linked to the geographical environment referred to by the name, including both natural factors (soil, water, altitude, humidity, and so on), and human (traditional techniques or technical methods used for farming or processing of the product, and so on).

- Verification and control methods.

All producers of the demarcated geographical area that meet the specifications are potential users of the appellation of origin. In this sense, and to ensure that the information provided to consumers about the product quality and its link with the geographical environment is essential to establish a method to verify and monitor compliance with the specifications. This will allow to make sure that all of the products in the market bearing the appellation of origin share the same features.

Without such control methods there would not only be a risk of deceiving consumers but, ultimately, the appellation of origin would lose its prestige thereby damaging all producers in the area.

Do not forget that the appellation of origin is a business tool and, therefore, in order to achieve the desired commercial success, it must be coupled with a commitment to quality that must be assumed by all the producers concerned.

- Application and paperwork

The procedure laid down in Decision 486 is called "procedure for the declaration of protection of an appellation of origin;" this procedure is quite similar to the procedure for the application for registration of trademarks.

The procedure begins with the filing of an application with the Indecopi Department of Distinctive Signs. Such application can be submitted by individuals or legal entities directly engaged in the extraction, production, or processing of the product to which the appellation of origin applies as well as by associations of producers in the area. State, Department, provincial or municipal authorities are entitled to file applications concerning the appellations of origin falling within their respective jurisdictions.

Once the formal requirements of the application have been confirmed, the Department of Distinctive Signs issues the order of publication, which is a summary of the application for the applicant to publish, for once, at applicant's expense, in the Official Gazette *El Peruano*. This publication is intended to inform third parties about the application so that if such third party may file an opposition to the application.

Whether or not oppositions are filed, the Department of Distinctive Signs shall analyze whether or not the application the application complies with the substantive requirements, i.e. if the sign whose registration is sought fits the legal definition of appellation of origin, and if it is subject to any of the prohibitions for registration set out.

If at the end of the examination, the authorities approved the application it means that the protection of the appellation of origin is ordered and its registration will be ordered. Its effectiveness is determined by the survival of the conditions that led to the declaration of the protection of the appellation of origin. Hence, the Department of Distinctive Signs may declare the term of its validity, if such conditions did not remain over time⁴⁶.

46 Conforme a la Decisión 486, los interesados podrán solicitar nuevamente la declaración de protección de la denominación de origen cuando consideren que se han restituido las condiciones para su protección, sin perjuicio de los recursos administrativos previstos en la legislación interna.



It should be noted further that the declaration of protection of the appellation of origin may be amended at any time if any of the elements of the appellation of origin change. Such amendment shall follow the procedure for the declaration of protection established, as far as applicable.

c. Owner and Protection System

In accordance with the provisions of Legislative Decree 1075, the owner/holder of the appellations of origin is the State, which grants authorization to use to producers, through the competent office -in the case of Peru, the competent office is the Indecopi Department of Distinctive Signs. This entity is also responsible for overseeing the proper use of the appellation of origin.

• Use Authorizations

Producers wishing to use the appellation of origin must follow administrative proceedings with Indecopi Department of Distinctive Signs. This process begins with the filing of an application including the following requirements:

- Name and address of the applicant;
- Powers-of-attorneys, where necessary;
- Documents proving the existence and representation of the applicant legal entity;
- The appellation of origin is to be used;
- Certification of the place or places of exploitation, production, or manufacturing of the product. This shall be proven with the inspection report performed by an authorized body;
- Certification of the features of the product to be distinguished with the appellation of origin, including its components, production or manufacturing methods and link factors with the protected geographical area to be proven with the inspection report performed by an authorized body;
- Certification of compliance with the Peruvian Technical Standard, if applicable; and,
- Proof of payment of the required fees.

If the Department of Distinctive Signs verifies that any of these requirements is not met, DDS shall notify the applicant to remedy such missing information, giving applicant a term of fifteen days.

Once all requirements are met, the DDS shall grant the authorization to use the appellation of origin in question. This authorization will be valid for use for ten years and may be renewed for equal periods for which interested party shall follow the renewal procedure established for such marks.

- **Oversight actions**

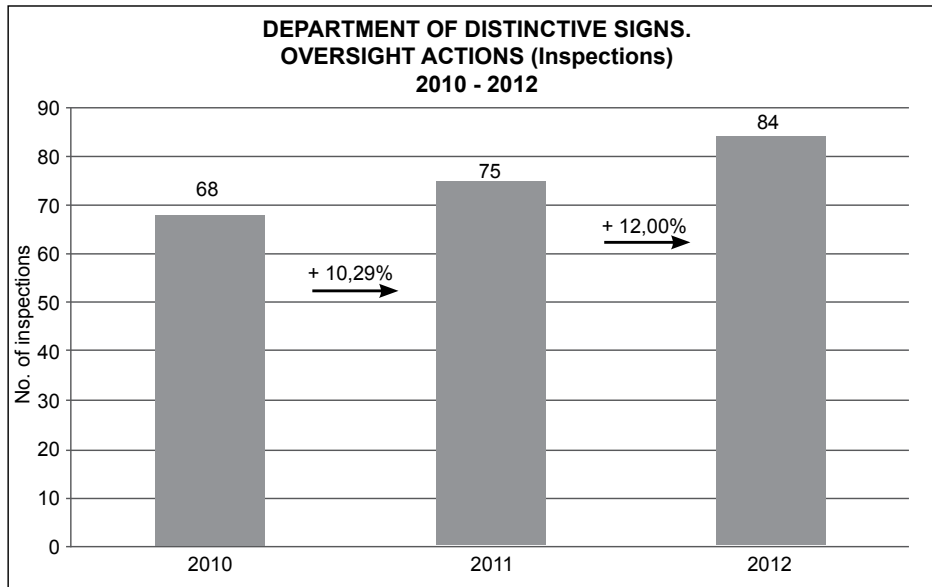
The Department of Distinctive Signs is the competent body to oversee the actions of enforcement on distinctive signs. In that sense, DDS is competent to oversee the appropriate use of appellations of origin and to sanction unauthorized uses thereof, through the proceeding called "proceeding for infringement of industrial property rights." This proceeding may be initiated ex officio or at the request the holder of the right; however, as in the case of Peruvian appellations of origin, the owner is the State, the proceedings are initiated ex officio, assuming Indecopi the representation of the interests of the State.

In the framework of its enforcement powers, the Department of Distinctive Signs is empowered to conduct inspections and order precautionary measure/injunctions that may entail cessation of use, seizure of allegedly infringing products, withdrawal of advertising material, among others. If the infringement proceeding action is declared grounded, these measures can become final; such penalty may be in addition to monetary fines or administrative fines.

It should be noted that in the case of appellations of origin, proceedings filed both against those who use the appellation of origin without authorization and against those having use authorization but using the appellation of origin on products that do not meet the features set forth for the appellation of origin.

The following graph shows the oversight actions performed in the last three years (See Figure No. 6):

Figure No. 6
Department of Distinctive Signs. Oversight Actions (Inspections)
2010 - 2012



Source: Department of Distinctive Signs.
 Prepared by: Department of Distinctive Signs.



d. Control Board

To succeed in the market with an appellation of origin, it is important to develop strategies aimed at highlighting the quality of products offered, and this is a big challenge, in the case of collective signs. Therefore, it is important for producers to be properly organized and to have a system of self-regulation and quality control of the products that are distinguished by the appellation of origin.

Following this line of thought, in Peru, in 2004, Law 28331, Law Framework on Control Board of Appellations of Origin, through which it establishes the Control Board which are entities formed by producers and whose main function is to control the quality of products and to represent the interests of the beneficiaries of the appellation of origin.

In fact, the abovementioned Law stipulates that the Control Board are organizations organized as non-profit civil associations, registered in the respective registry - Register of Legal Entities- and whose only purpose is to manage an appellation of origin.

These associations will be formed by the individuals or legal persons directly engaged in the extraction, production, and manufacturing of the product or products covered with the appellation of origin, who voluntarily wish to belong to such associations. Moreover, public and private entities having direct links with the products whose appellation have been granted protection may also join such associations. However, the majority of members of such association should be from the private sector.

Now, it is important to note that the civil association wishing to function as a Regulating Council for a given appellation of origin must request authorization to Indecopi Department of Distinctive Signs. The DDS shall grant permission after an administrative procedure in which DDS examines compliance with the following requirements:

- That the purpose of the civil association is to manage a specific recognized appellation of origin.
- That from the data provided to the DDS and the information obtained by DDS, it is possible to confirm that the civil association meets the conditions necessary to guarantee respect of the legal provisions and ensure the efficacy of the administration of recognized appellations of origin.
- Along with the application, applicant shall include the Rules for the appellation of origin, for its approval from the Directorate of Distinctive Signs.

Once the DDS confirms compliance with those requirements and the conditions necessary to represent the beneficiaries of the appellations of origin managed, the Indecopi Department of Distinctive Signs authorizes the operation of the Civil Association as a Control Board with the issuance of a duly reasoned decision, which is then published in the Official Gazette *El Peruano*.

Once authorized, the Control Board will have, among others, the following functions:

- Draft amendment proposals to the Rules of a given appellation of origin for its approval by the Indecopi Department of Distinctive Signs.
- Guide, monitor, and control the production and manufacturing of products covered by the appellation of origin, ensuring that they compliance with the Technical Standards



or Rules, as applicable, in order to guarantee the origin and quality of the products to be marketed in the national and international markets.

- Ensure the prestige of the appellation of origin in the domestic market and abroad in coordination with other public and private sectors, as appropriate.
- Act with legal capacity to represent and defend the general interests of the appellation of origin.
- Exercise the powers delegated to such Council by the Indecopi Department of Distinctive Signs.
- Keep a list of beneficiaries of the appellation of origin.
- Keep track of the annual production of the product concerned.
- Perform the necessary actions to preserve the prestige and good use of the appellation of origin that it manages.
- Ensure the origin and quality of a product, by establishing a quality control system comprising analytical tests (physical, chemical, bacteriological, and so on) and organoleptic, as appropriate.
- Establish and enforce penalties upon members for infringing the bylaws, in accordance with the provisions therein.

The Department of Distinctive Signs is called to perform oversight duties vis a vis the Control Board, and may impose penalties for breach of duty or for harming the interests of the appellation of origin, and may even cancel the operating license.

e. Legislative amendments resulting from bilateral treaties signed by Peru

The only bilateral treaty that has entailed amendment in the legislation of appellations of origin is the Trade Promotion Agreement with the United States of America (Peru – USA TPA).

In fact, as a result of the commitments agreed in this agreement, two prohibitions of registration applicable to appellations of origin were included in the law, in addition to those already stipulated in Decision 486. These prohibitions are regulated under Article 89 of Legislative Decree 1075, which provides:

“Article 89. – Prohibitions

In addition to the provisions of art. 202 of Decision 486, it is not possible to recognize as appellations of origin, those that:

a) are likely to cause confusion with a mark whose registration has been sought in good faith, or previously registered in good faith.

b) they constitute a reproduction, imitation, translation, transliteration or transcription of, all or part of, a well-known trademark held by a third party, regardless of the products or services to which the sign applies, when its use was likely to cause confusion or association with that third party or its products or services; a misappropriation of the prestige of the trademark; or fading of its distinctive power or commercial or advertising value.”

Thus, with these legislative amendments to our legislation -in the relationship between trademarks and appellations of origin, the governing rule is the principle of priority: first in time (on record), first in right.

1.6.3. Peruvian Registered Appellations of Origin

To date, Peru counts with eight appellations of origin, six of which were granted in the last five years. Next, a brief description of each⁴⁷:

a. “PISCO”

This appellation of origin is used to identify a brandy wine made since Spanish colonial times, which is an expression of our “mestizaje” [‘melting pot of people’]: the vine brought from Europe, a soil suitable for cultivation in the southern coast of Peru and the processing techniques developed in the area.

“PISCO” was declared as a Peruvian appellation of origin by Resolution 072 087-DIPI dated 12 December, 1990, for products obtained by the distillation of recently fermented musts obtained from the so-called “pisco grapes” on the coast of the Departments of Lima, Ica, Arequipa, Moquegua, and the Locumba, Sama and Caplina Department of Tacna. Also, the Supreme Decree 001-91-ICTI/IND of 16 January, 1991, gave full official recognition to the word “PISCO” as a Peruvian appellation of origin.

⁴⁷ Information taken from: www.Indecopi.gob.pe.

Map of the geographical scope of the appellation of origin “PISCO”.



RESOLUTION CONCERNING THE APPELLATION OF ORIGIN "PISCO"



Director's Resolution

Nº 072087 VIFI

Lima, 12 DIC. 1990

Having seen Report 492-99-VM/IND dated 25 September 1990, in which the Vice Ministry of Industry requests that the name PISCO be considered an Appellation of Origin and the opinions of a number of producers:

CONSIDERING:

That article 2, S.D. 023-90-ICTI/IND dated 24 July, 1990, stipulates that an appellation of origin means the geographical name of a region or a specific place used to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural factors and factors human;

That, pursuant to Article 3 of the abovementioned S.D. 023-90-ICTI/IND, the State of Peru is the owner/holder of the Appellation of Origin, acting on behalf of the Nation, and ITINTEC is competent agency charged with making the official recognition of the appellation of origin as well as the geographical area it comprises and the protected products;

That, based on the information provided by the ITINTEC Department of Standardization and Quality Assurance, pisco is a



product obtained from the distillation of recently fermented musts of exclusively grapes, following traditional practices established in production areas previously recognized and classified as such by the appropriate official agency as established by the ITINTEC National Technical Standard, No. 211,001, which is part of this Resolution;

That the protection of appellations of origin falls under the legal scope of Industrial Property, counting with the guarantee of the State because of the social interest of such appellation of origin, pursuant to the provisions of Article 110 of the Political Constitution of Peru and Article 46 of Supreme Decree 001-71-IC/DS, in force by virtue of Law 23407;

In application of the above laws and in exercise of the powers conferred by the S.D. 019-86-ICTI/IND, of 19 May, 1986;

IT IS RESOLVED:

Article One.- DECLARE the appellation of PISCO as a Peruvian appellation of origin for products obtained by the distillation of must resulting from the exclusively fermentation of mature grapes according to the provisions of the ITINTEC National Technical Standard No. 211.001, made on the coast of the Departments of Lima, Ica, Arequipa, Moquegua and the valleys of Locumba, Sama and Caplina of the Department of Tacna.

Article Two.- ORDER the registration of the Appellation PISCO in the Book of Appellations of Origin of the ITINTEC Department of Industrial Property.

Register and serve upon interested parties,

LUIS CHAVEZ LOYOLA
Director of Industrial Property
ITINTEC

b. GIANT WHITE MAIZE OF CUZCO

The Giant White Maize of Cuzco was declared as an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 12981-2005/OSD-INDECOPI, dated 26 September, 2005, to distinguish the giant white corn (Paraqay sara) grown in the provinces of Calca and Urubamba, Department of Cusco.

“The product is characterized as a soft corn or soft, giant grain, corn unique to the giant white corn (Paraqay Sara), whose characteristics are due to natural factors (location or geographical agro-climatic and genotype) and human factors of submission to the process, with a high manual component, to be cultivated by farmers with tradition and knowledge⁴⁸”.

c. “CHULUCANAS”

“CHULUCANAS” was declared an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 11517-2006/OSD-INDECOPI, dated 26 July, 2006, to distinguish one type of ceramic that is made in the district of Chulucanas, Morropón Province, Department of Piura.

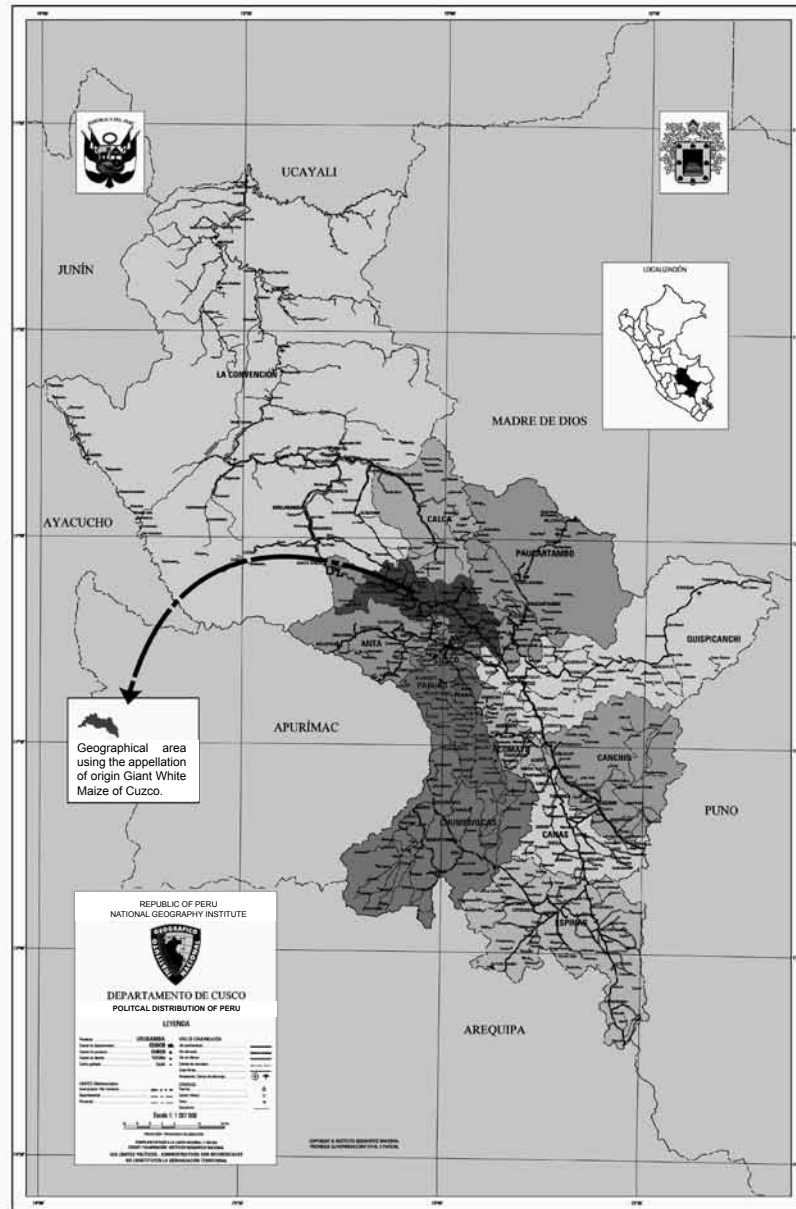
It should be noted that the Chulucanas district is bounded to the north by the District of Frías (Province of Ayabaca), to the south by the District of Catacaos (Province of Piura), to the east by the Districts of La Matanza, Morropón, and Santo Domingo, and to the west, with the Districts of Castile (Province of Piura) and Tambogrande (Sullana).

“(…) The product is characterized as pottery made in the District of Chulucanas and clay allegedly extracted also from the Chulucanas District and climatic factors from the area and use of ancestral techniques used to make such pottery the recuing the historical link with the Vicus and Tallan civilizations⁴⁹”.

48 Excerpt from the Resolution recognizing the appellation of origin.

49 Excerpt from the Resolution recognizing the appellation of origin.

Map of the geographical scope of the appellation of origin "GIANT WHITE MAIZE OF CUZCO"



**CERTIFICATE OF APPELLATION OF ORIGIN
"GIANT WHITE MAIZE OF CUZCO"**



indecopi



República del Perú

**Registro de la Propiedad Industrial
Oficina de Signos Distintivos**

CERTIFICADO N° 00000002

La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 012981-2005/OSD - INDECOPI de fecha 26 de Setiembre de 2005, ha quedado inscrito en el Registro de Denominaciones de Origen, la siguiente:

Denominación
De Origen : MAIZ BLANCO GIGANTE CUSCO

Para : Maíz blanco gigante (Paraqay sara)

Solicitud : 0249792-2005

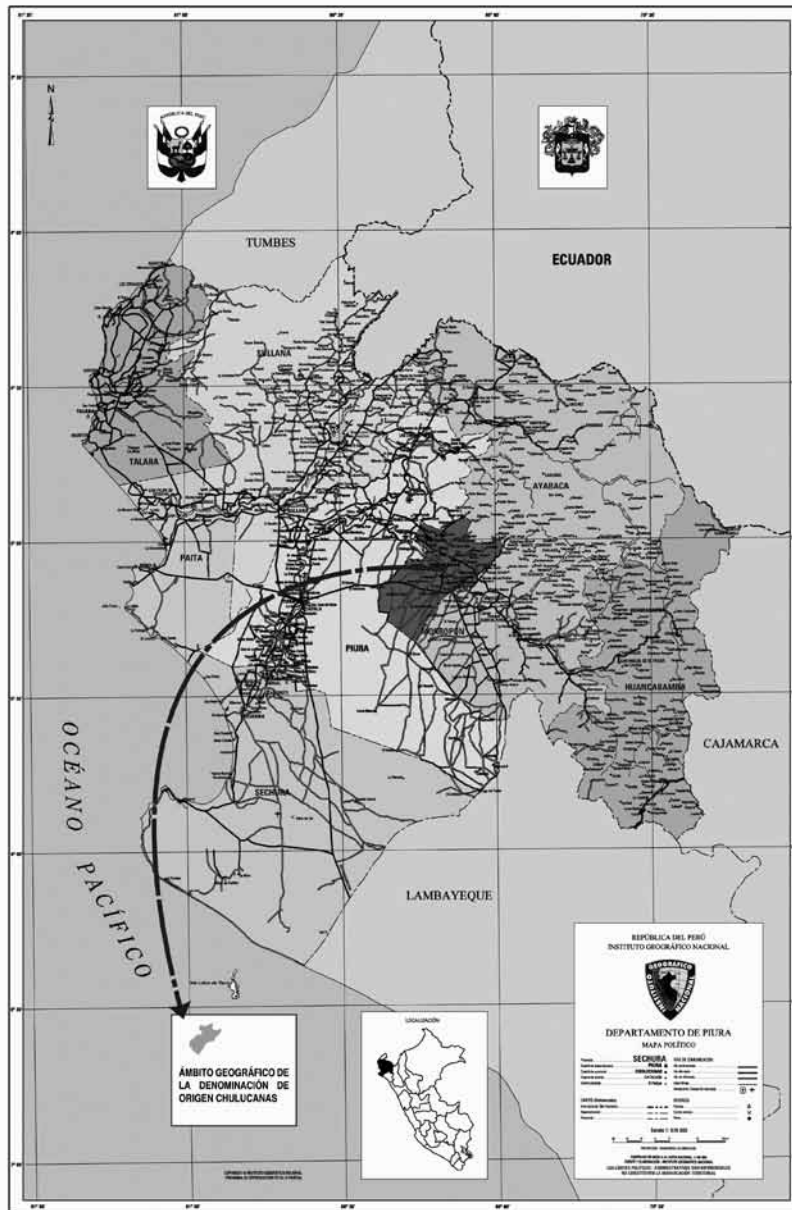
País : PERU

Tomo : 001

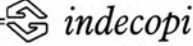

Folio : 002

Dra. TERESA MERA GÓMEZ
Jefa de la Oficina de
Signos Distintivos
INDECOPI

Map of the geographical scope of the appellation of origin "CHULUCANAS"



CERTIFICATE OF APPELLATION OF ORIGIN "CHULUCANAS"

 
República del Perú

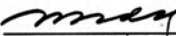
Registro de la Propiedad Industrial

Oficina de Signos Distintivos

CERTIFICADO N° 00000003

La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 011517-2006/OSD - INDECOPI de fecha 26 de Julio de 2006, ha quedado inscrito en el Registro de Denominaciones de Origen, la siguiente:

Denominación De Origen	:	CHULUCANAS
Para	:	Cerámica
Solicitud	:	0273038-2006
País	:	PERU
Tomo	:	001
Folio	:	003


MIGUEL ANGEL SANCHEZ
DEL SOLAR QUINONES
Jefe de la Oficina
de Signos Distintivos
INDECOPI



In the case of the appellation of origin "CHULUCANAS," the human factor is very important. Therefore, we would like to include the following testimonial of one of the most renowned craftsmen in Chulucanas:

"My father, Andres Sosa, was born in a village of potters descendants of the Tallan civilization near Catacaos (...), he settled in this city and I was born here. I learned from them pottery, I learned to make pots and jars as I helped my father in his shop. They made their ceramics for people of the community to use. But over time, the market dwindled due to the invasion of the aluminum and plastic utensils. This is back in roughly 1942, when the use of pottery began to decline. Moreover, when we got tap water was in our homes, people stopped buying clay pots or jars to store water. They bought plastic or aluminum. For all that, there was a great migration of young craftsmen.

Some went to Lima and became street vendors, others went to other cities to try their luck. By then, my father was getting old and lost his sight so he could not work and was going to lose all his knowledge. However, it turns out that by 1978, more or less, there was a Catholic nun here, a Marista sister named Gloria Joyce, who worked as a lab technician in the Chulucanas public clinic. At that time, she was acquainted with Max Inga, one of the best potters in the area because he would go to the clinic to be treated for his disease. She knew it was hopeless, so she tried to look for some entertainment for him. That is how they came to my house. I did things of clay, but not with refined clay and sometimes I bought paint in the hardware store to paint my artifacts, because I could not think of anything else. But, he was quite skillful with ceramics..

The nun was happy for the things he did but at first, of course, I was a bit suspicious. Then, little by little, she would come here almost every day and brought me magazines of American Indians, showing how they worked and went to college. Once she brought me a book about Peruvian archeology showing the Vicus and Tallan civilizations and others, of which I knew very little. Because, the truth is that sometimes as Peruvians we do not care about our own culture. She was interested in everything, but especially in how the ancient Vicus had made the "negative," which is a post-baking technique. Until one day, after so much of the same, I asked her to bring me a sample of a 'huaco' to see it and see what else I could find. So she brought me a broken piece of an original 'huaco' from the Vicus civilization. I saw it and for someone who has worked so long as a craftsman, I actually saw that it was smoke, but did not say anything. Well, I told her I would do some experiments.

I used some clay with which we worked, I made a quick dashed line, I smoked it, I washed it, and the next day I showed it to Gloria Joyce and she told me that it was the first really negative output in at least more than 100 years.

But she did not stop there. She also took me to the archeological site 'huacas'. We had never been there on the hill and she encouraged us to go. Afterwards, we started to experiment and wonder, 'How did the Vicus people do the baking/smoking'. Did they do it with garbage? with rice husk? with other leaves?'. Yet, what is most abundant for us is mango leaf. So used mango leaf for baking/smoking and we got a unique finishing unlike any other material because the mango leaf as a kind of resin which, when burned, helps permeate yellow. For that reason, the ceramic has two features, one deep dark brown due to the post-firing and the mild yellow, by burning it in special kilns with mango leaf. I have always created styles. Creativity is another factor that says something about the customs of the peoples. We must rescue the old techniques that are useful in our present days. Craftsmen are now better known and respected. Some people do not come from families of craftsmen but because of their abilities they have joined our shops. In the past, women were; now, they are involved in the polishing, a pretty long step in the process."

**Gerásimo Alache Sosa, 58, craftsman, Chulucanas.
(Testimonial given to Maibi Montoya "The strength of being together.
Business networks in Northern Peru. s/a CAF).**

d. "PALLAR DE ICA"

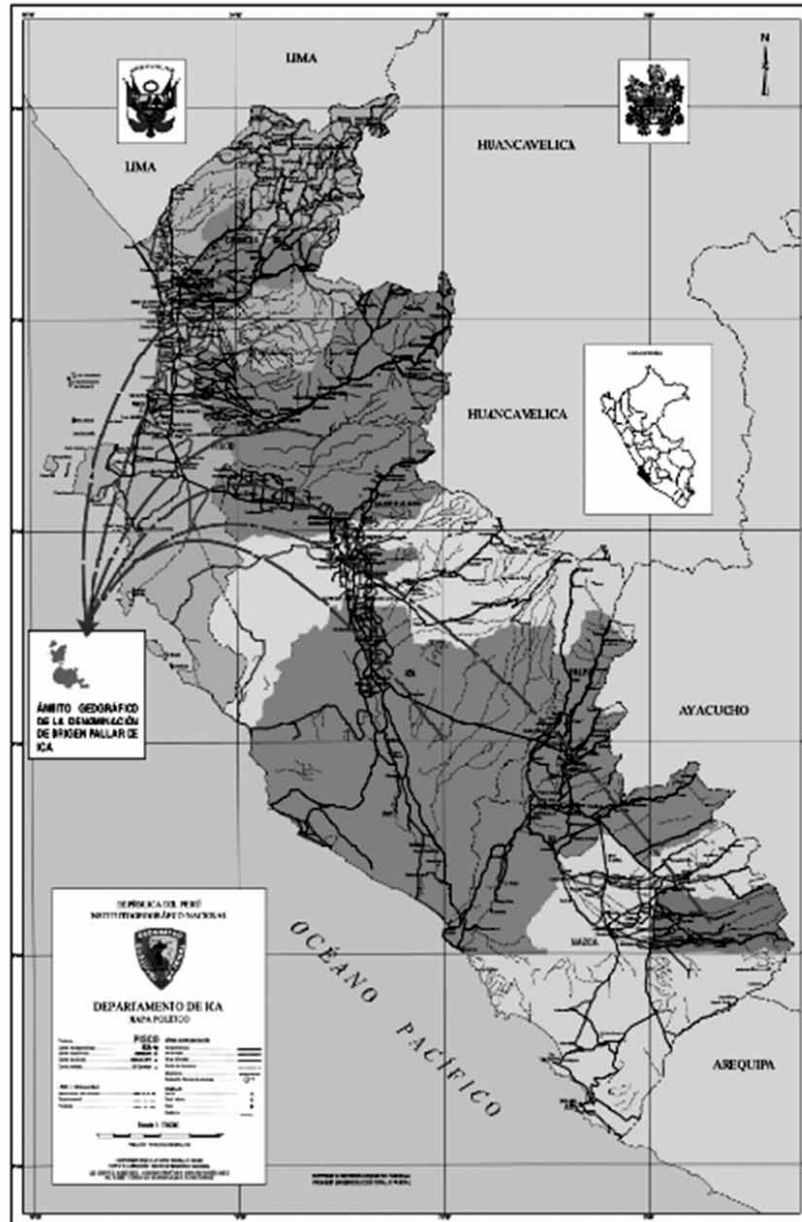
"PALLAR DE ICA" (Lima Bean of Ica) was recognized as an appellation of origin by the Indecopi Department of Distinctive Signs through Resolution 20525-2007/OSD-INDECOPI, dated 23 November, 2007, to identify a type of bean that is grown in the provinces of Chincha, Pisco, Ica, Palpa, and Nazca, in the Department of Ica.



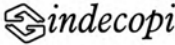

Photo provided by the Ministry of Agriculture.

The "PALLAR DE ICA" (Lima Bean of Ica) has a pleasant taste (sweet), and thin shell. After cooking, it acquires a smooth, creamy texture. Its unique sweetness is due to their lower content of hydrogen cyanide, as a result of the interaction of environmental factors: soil, air, water, farming system, luminosity, temperature, and human factors (agronomic management and knowledge of the practices used by the Nazca and Paracas civilizations, that farmers in the area continue to use presently).

MAP OF THE GEOGRAPHICAL SCOPE OF THE APPELLATION OF ORIGIN "PALLAR DE ICA"



CERTIFICATE OF APPELLATION OF ORIGIN "PALLAR DE ICA" (LIMA BEAN OF ICA)

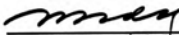



Registro de la Propiedad Industrial
 Oficina de Signos Distintivos

CERTIFICADO N° 00000004

La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 020525-2007/OSD - INDECOPI de fecha 23 de Noviembre de 2007, ha quedado inscrita en el Registro de Denominaciones de Origen, la siguiente:

Denominación De Origen	:	PALLAR DE ICA
Para	:	Pallar
Solicitud	:	0309793-2007
Pais	:	PERU
Tomo	:	001
Folio	:	004



MIGUEL ANGEL SANCHEZ
DEL SOLAR QUIRONES
Jefe de la Oficina
de Signos Distintivos
INDECOPI

e. **“CAFÉ VILLA RICA”**

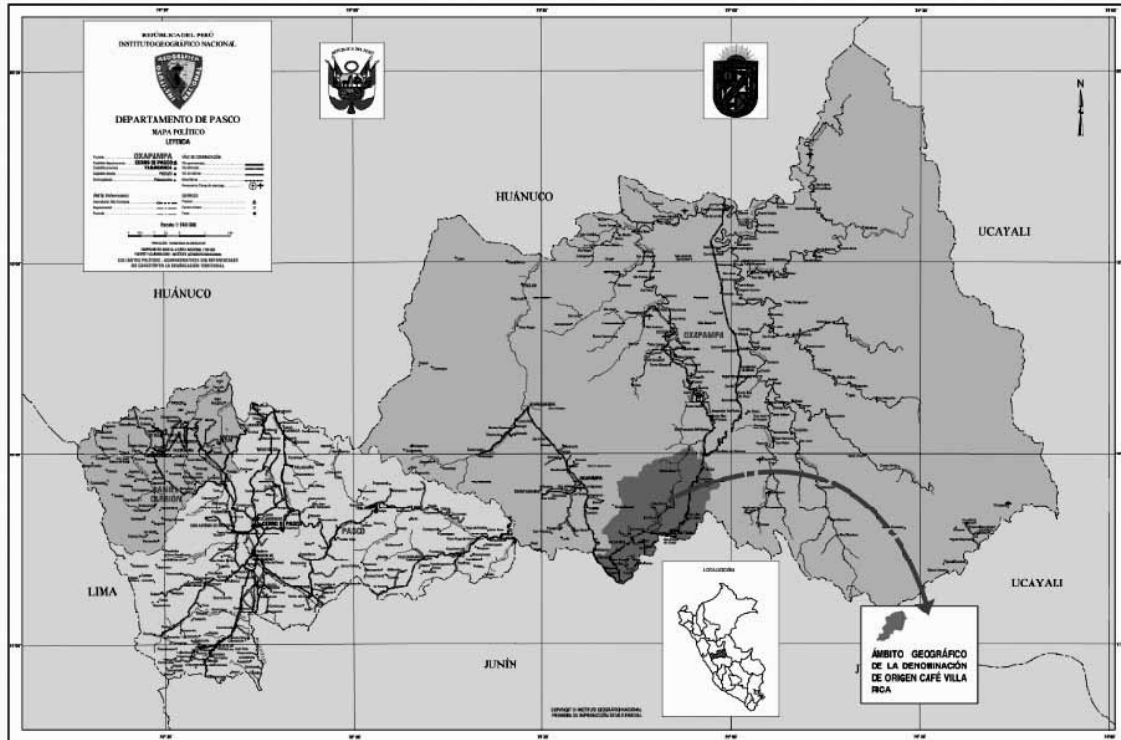
“CAFÉ VILLA RICA” (coffee from the Villa Rica area) was recognized as an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 12784-2010/DSD-INDECOPI, dated 20 August, 2010, to distinguish green coffee beans of the species *Coffea arabica*, which occurs in the District of Villa Rica, located in the Province of Oxapampa, Pasco Region, located in the middle area of Peru.

This is a *Gourmet* coffee characterized by its high carbohydrate content; hence it has a medium body, pleasant aroma, adequate acidity, and unique sweetness.

This appellation of origin consists of the term “VILLA RICA” which is the name of the District of the same name, located in the Province of Oxapampa, Pasco Region, located in the middle area of Peru.

Many of the qualities displayed by this coffee are related to geographical component of Villa Rica, the weather where it is grown, the types of soils, and the water sources serve to mobilize nutrients from the soil to the plant. These factors present in the production area of Villa Rica are combined with the human factor, which consists of the farming practices and techniques used by farmers, as well as post-harvest work culminating the yielding of the green beans.

MAP OF THE GEOGRAPHICAL SCOPE OF THE APPELLATION OF ORIGIN "CAFÉ VILLA RICA"



CERTIFICATE OF APPELLATION OF ORIGIN "CAFÉ VILLA RICA"

 
República del Perú

Registro de la Propiedad Industrial

Dirección de Signos Distintivos

CERTIFICADO N° 0000005

La Dirección de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 12784-2010/DSD - INDECOPI, de fecha 20 de Agosto de 2010, ha quedado inscrita en el Registro de Denominaciones de Origen, la siguiente:

Denominación De Origen : CAFÉ VILLA RICA

Para : Café en grano verde

Solicitud : 0412387-2010

País : PERU

Tomo : 001

Folio : 005


PATRICIA GAMBOA VILELA
Directora
Dirección de Signos Distintivos
INDECOPI



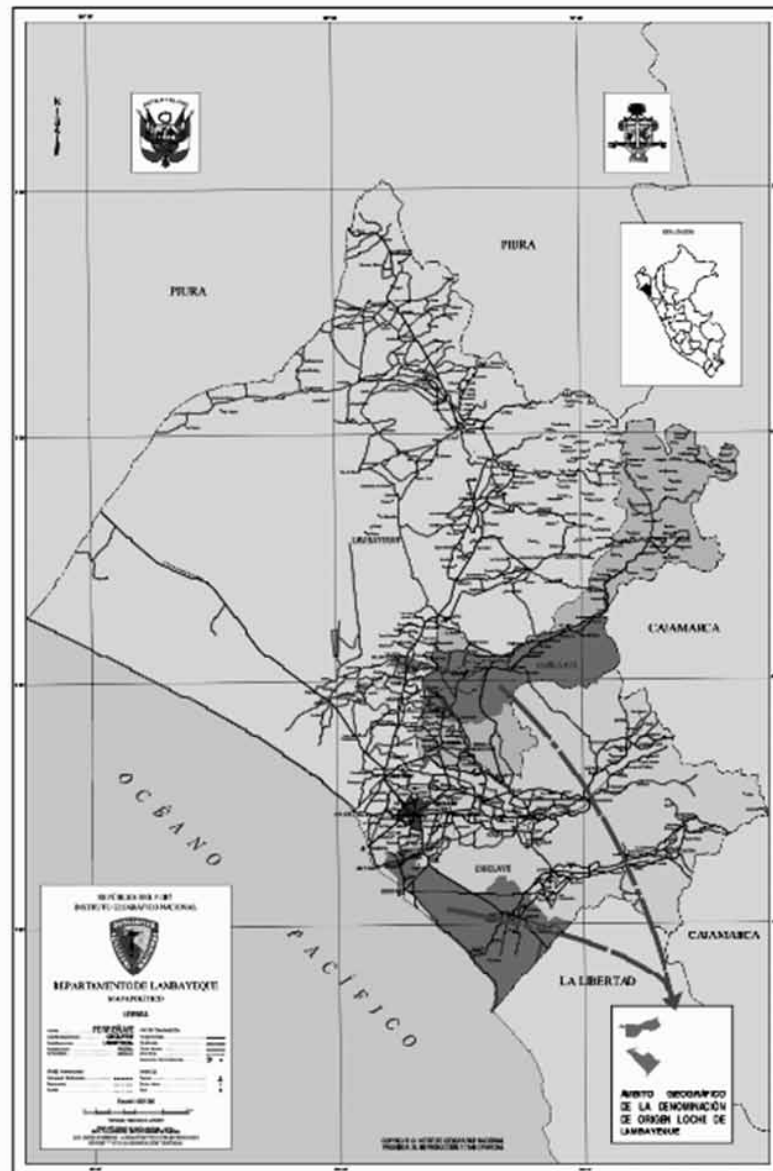
f. "LOCHE DE LAMBAYEQUE"

"LOCHE DE LAMBAYEQUE" (Loche of Lambayeque – a type of pumpkin) was recognized as an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 18799-2010/DSD-INDECOPI, dated 03 December, 2010, to distinguish a fruit with a pleasant aroma and flavor, high gastronomic value.



This fruit is the result of the interaction of environmental factors occurring in the Lambayeque areas (Provinces of Chiclayo, Lambayeque, and Ferreñafe) and due to geographical factors. In addition, there is the human factor associated with the agronomic management of areas where "LOCHE of LAMBAYEQUE" is grown, to which we should add the knowledge of farmers in the area who use unique practices relating to crop management, inherited from their ancestors. These practices remain to the present and contribute to obtain a product with characteristics that differ from others of the same species (*Cucurbita moschata Duchesne*).

MAP OF THE GEOGRAPHICAL SCOPE OF THE APPELLATION OF ORIGIN "LOCHE DE LAMBAYEQUE"



**CERTIFICATE OF APPELLATION OF ORIGIN "LOCHE DE LAMBAYEQUE"
(LOCHE OF LAMBAYEQUE)**



Registro de la Propiedad Industrial
Dirección de Signos Distintivos

CERTIFICADO N° 00000006

La Dirección de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 18799-2010/DSD - INDECOPI, de fecha 03 de Diciembre de 2010, ha quedado inscrita en el Registro de Denominaciones de Origen, la siguiente:

Denominación
De Origen : LOCHE DE LAMBAYEQUE

Para : Loche

Solicitud : 0389877-2009

País : Perú

Tomo : 001

Folio : 006

PATRICIA GAMBOA VILELA
Directora
Dirección de Signos Distintivos
INDECOPI

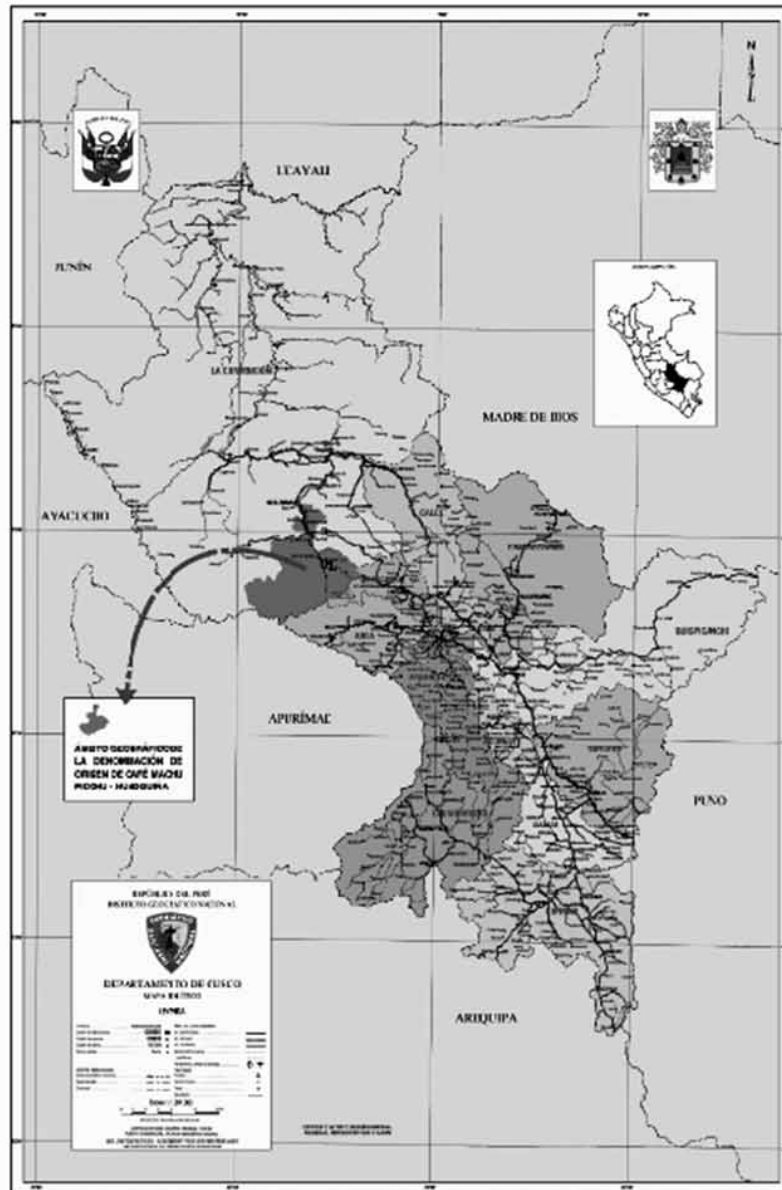
g. “CAFÉ MACHU PICCHU – HUADQUIÑA”

CAFÉ MACHU PICCHU – HUADQUIÑA (coffee from the Huadquiña area) was recognized as an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 3917-2011/DSD-INDECOPI, dated 8 March, 2011, to distinguish green coffee beans of the species *Coffea arabica* L., which occurs in the hamlet of Huadquiña (formerly the Huadquiña Ranch), District of Santa Teresa, located in the Province of La Convención, Cusco Region.

This geographical area is located near the valleys which houses the Historic Sanctuary of Machu Picchu near mountain peaks Salkantay, Sacsarayoc, and Humantay. These snow-capped peaks help create a microclimate in that area with temperatures that favor slow ripening of the cherry and the accumulation of sufficient organic matter to the fruits and the seed that together, eventually leading to a coffee with excellent body.

In addition, the human factor is present through the field management of farmers and their traditional customs for farming and harvesting. Such practices have played an important role in affording this coffee its unique characteristics, differing from others of the same species (*Coffea arabica*) farmed in other coffee producing areas of Peru.

MAP OF THE GEOGRAPHICAL SCOPE OF THE APPELLATION OF ORIGIN "CAFÉ MACHU PICCHU – HUADQUÍÑA"



CERTIFICATE OF APPELLATION OF ORIGIN "CAFÉ MACHU PICCHU – HUADQUIÑA"



Registro de la Propiedad Industrial Dirección de Signos Distintivos

CERTIFICADO N° 00000007

La Dirección de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 003917-2011/DSD - INDECOPI, de fecha 08 de Marzo de 2010, ha quedado inscrita en el Registro de Denominaciones de Origen, la siguiente:

Denominación
De Origen : CAFE MACHU PICCHU - HUADQUIÑA

Para : Café en grano verde

Solicitud : 0371469-2008

País : PERU

Tomo : 001

Folio : 007

PATRICIA GAMBOA VILELA
Directora
Dirección de Signos Distintivos
INDECOPI

h. "MACA JUNÍN-PASCO"

MACA JUNÍN-PASCO (root of a Peruvian plant *Lepidium meyenii* (Brassicaceae) was recognized as an appellation of origin by the Indecopi Department of Distinctive Signs, through Resolution 6065-2011/DSD-INDECOPI, dated 12 April, 2011, to distinguish the maca grown in the Junín and Pasco Regions.

The "MACA-PASCO JUNÍN" is characterized by average values of reducing sugar content which determine its organoleptic characteristics such as sweetness, flavor, aroma, and color, which are its distinctive peculiarities. Also, carbohydrates and magnesium content that helps in stress reduction together with potassium, are the one that provide the energizing and invigorating characteristics of maca since they are directly related to caloric intake.



The characteristics of "MACA-PASCO JUNÍN" are the result of the interaction of natural and human factors in the production area. In the case of natural factors, it is worth noting that the "MACA-PASCO JUNÍN" grows between 3,950 and 4,500 m.a.s.l., in the Andes Mountains, so they face adverse weather conditions, which ultimately affect the characteristics of the maca that occurs in this area.

CERTIFICATE OF APPELLATION OF ORIGIN "MACA-PASCO JUNÍN"



Registro de la Propiedad Industrial

Dirección de Signos Distintivos

CERTIFICADO N° 00000008

La Dirección de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 006065-2011/DSD - INDECOPI, de fecha 12 de Abril de 2011, ha quedado inscrita en el Registro de Denominaciones de Origen, la siguiente:

Denominación
De Origen : MACA JUNIN - PASCO

Para : Maca fresca y maca seca

Solicitud : 0377259-2008

País : PERU

Tomo : 001

Folio : 008

PATRICIA GAMBOA VILELA
Directora
Dirección de Signos Distintivos
INDECOPI



1.6.4. Authorized Control Boards

An aspect that we would need to analyze, with regard to a possible amendment to the law, is the requirement of a Control Board for the granting of protection to an appellation of origin. In fact, we need to assess if the association has sufficient conditions to perform the functions of a Control Board.

On this regard, it is worth remembering that the proper use of an appellation of origin mainly depends on the producers organization and on their applying self-regulation with regard to the compliance of the specifications. It is therefore essential that, when the registration of an appellation of origin is granted, the producers organization should already count with a body responsible for ensuring that specifications are met.

However, since this is not an application requirement, producers defer the formation of this body, thereby delaying the effective and appropriate use of the appellation of origin in the market.

This is one of the factors that explains why only two of the eight registered Peruvian Appellation of Origin presently have in place their Control Boards authorized by Indecopi: "CHULUCANAS" and "PISCO".

a. Chulucanas Appellation of Origin Control Board

The Control Board for the Chulucanas Appellation of Origin was authorized by the DDS, through Resolution 3770-2008/OSD-Indecopi, dated 5 March, 2008.

The Control Board for the Appellation of Origin "CHULUCANAS" has adopted the following sign as a tool to verify and perform quality control of the products identified by the appellation of origin:



CERTIFICATE OF AUTHORIZATION OF THE CONTROL BOARD FOR THE APPELLATION OF ORIGIN "CHULUCANAS"



República del Perú

Registro de la Propiedad Industrial Oficina de Signos Distintivos

CERTIFICADO N° 00000001

La Oficina de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 003770-2008/OSD-INDECOPI, de fecha 05 de marzo de 2008, ha quedado inscrita en el Registro de Autorizaciones de Funcionamiento de Consejos Reguladores de Denominaciones de Origen, la siguiente autorización:

Para funcionar : CONSEJO REGULADOR
como

Denominación : CHULUCANAS
de origen

Asociación civil : CONSEJO REGULADOR DE LA DENOMINACION DE ORIGEN
Autorizada CERAMICA DE CHULUCANAS

Solicitud : 310482-2007

País : Perú

Tomo : 001

Folio : 001

MIGUEL ANGEL SANCHEZ
DEL SOLAR QUIÑONES

Jefe de la Oficina
de Signos Distintivos
INDECOPI

b. Pisco Appellation of Origin Control Board

The Department of Distinctive Signs authorized, through Resolution 2378-2011/OSD-Indecopi, the National Association of Pisco Producers to function as the Control Board for the Pisco Appellation of Origin.

In order to better comply with its duties, the Control Board has adopted the following sign:



As we have pointed out throughout this document, the appellations of origin are business tools that, if properly used, can help generate market value for local and traditional products of our peoples.

Thus, since this is only a means and not an end in itself, supporting every appellation of origin there needs to be a solid base of producers organized and committed to quality. This is why, in our country, it is very important to count with the Control Boards within the appellation of origin structure. In that sense, all appellations of origin registered to date are expected to count, in the near future, with their respective Control Boards. However, this will depend primarily on producers and their desire to join efforts and work together around the appellation of origin.

CERTIFICATE OF AUTHORIZATION OF THE CONTROL BOARD FOR THE APPELLATION OF ORIGIN "PISCO"



Registro de la Propiedad Industrial Dirección de Signos Distintivos

CERTIFICADO N° 00000002

La Dirección de Signos Distintivos del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI, certifica que por mandato de la Resolución N° 002378-2011/DSD-INDECOPI, de fecha 14 de febrero de 2011, ha quedado inscrita en el Registro de Autorizaciones de Funcionamiento de Consejos Reguladores de Denominaciones de Origen, la siguiente autorización:

Para funcionar : CONSEJO REGULADOR
como

Denominación : PISCO
de origen

Asociación civil : ASOCIACIÓN NACIONAL DE PRODUCTORES DE PISCO
autorizada

Solicitud : 404720-2009

País : Perú

Tomo : 001

Folio : 002

PATRICIA GAMBOA VILELA
Directora
Dirección de Signos Distintivos
INDECOPI



1.6.5. International Protection of Peruvian Appellations of Origin

In order to protect its appellations of origin abroad, Peru has followed mainly two paths: (i) to apply for registration following the relevant procedure directly with the competent authority of the country concerned, and (ii) to resort to the Lisbon System for protection in member countries of the Agreement.

On this regard, it is worth noting that to date Indecopi, through the Department of Distinctive Signs, has made the necessary arrangements with the World Intellectual Property Organization (WIPO) to protect the eight appellations of origin registered to date within the framework of the Lisbon Agreement.

1.6.6. Activities

a. Worldwide Symposium on Geographical Indications

In June 2011, Indecopi co-organized with the Ministry of Foreign Affairs and the World Intellectual Property Organization (WIPO) the World Symposium on Geographical Indications.

This global symposium is organized every two years by WIPO and competent institutions of the host country. This time the symposium held in Lima gathered more than three hundred people, including academics, government officials, and representatives of producers from around 62 countries and served to publicize the work of Indecopi on appellation of origin.

It is worth noting that the Peruvian producers using the appellations of origin also attended the conference and had a chance to exhibit their products during the Symposium.

b. Publication of the book "Appellations of Origin. Wonders of the Peruvian Spirit".

This publication presents the first seven appellations of origin, since, at the time of printing (first quarter of 2011), the appellation of origin "MACA-PASCO JUNÍN" had not yet been registered.

This book brings us close to the human stories behind each appellation of origin, the difficulties faced by producers and artisans, their entrepreneurial spirit, passion for what they do, and love for their traditions. This is a publication that confirms that the uniqueness

of products bearing the appellations of origin is determined not only by natural factors but also human factors.

This important publication was made possible through the cooperation of the USAID – Trade Facilitation Program, and was distributed at the Global Symposium on Geographical Indications, which further contributed to the dissemination of Peru's appellations of origin.

c. Special ceremony for the launching of the book: "Appellations of Origin. Wonders of the Peruvian Spirit".

Also, Indecopi, together with the USAID – Trade Facilitation Project held a special ceremony to launch the book: "Appellations of Origin. Wonders of the Peruvian Spirit." This ceremony was attended by producers of our appellation of origin.



d. Photography exhibition of the eight national appellations of origin registered to date.

This activity was also conducted with the cooperation of the USAID – Trade Facilitation Project within the framework of the Intellectual Property Week, and counted with the participation of producers and artisans of registered appellations of origin.

e. FAO Project

In 2010 and 2011, the Department of Distinctive Signs participated in a FAO project, whose activities were intended to enlighten awareness and train farmers of the Pallar de Ica (Ica Lima Bean) on the importance of quality and working under the association as pillars for the success of the appellation. The program included talks on the Control Board.



f. Study on the situation of the appellation of origin “Giant White Maize of Cuzco”

Under the interagency agreement with AGRO RURAL, the agencies conducted a study on the situation of the appellation of origin “GIANT WHITE CORN OF CUSCO,” so that with AGRO RURAL they can provide technical assistance to producers, within the framework of its powers.

g. Information workshops on appellations of origin, use authorizations, and Control Boards

Several workshops have been held in order to disseminate the notions of appellations of origin, use authorizations/license, and Control Boards among producers using the different appellations of origin. This entailed visits to the respective areas and meetings with producers and other local entities.

1.6.7. Difficulties, challenges, future

One of the main challenges facing the development of appellations of origin in our country is related to the characteristics of rural and artisan sectors, to insufficient technical and financial capacity to manage a collective use distinctive signs, such as the appellation of origin, which requires of producers their commitment to quality, which means strictly following the specification so as to ensure to the market and consumers that the products bearing

the appellation of origin have been subject to rigorous control. Only with an established quality system can products bearing appellations of origin capture and position themselves in the local and international markets. To address this difficulty, it is necessary to articulate a national strategy involving various public entities based on their competence and the various private actors involved with the concerned product, so as to raise those conditions present in rural and artisanal sectors of our Peru.

Another major difficulty faced is the lack of knowledge about appellations of origin, not only in the different levels of the public administration, but also - and mainly – in the market. In fact, consumers and commercial brokers are not familiar with this legal instrument and therefore do not recognize the value that products bearing appellations of origin can have in the market. Hence, the market would not be willing to pay more for product bearing appellations of origin and, therefore, producers or craftsmen would not be compensated according to their expectations. To do this, we need to continue and increase the dissemination activities of this legal protection at different levels⁵⁰.

The above mentioned items are just some of the challenges facing the development of this legal institution in our country. In recent years, Peru has undergone major developments on appellations of origin; nevertheless, there is still a long way to go for appellations of origin to be recognized as effective tools for promoting entrepreneurship in rural areas and among craftsmen in the country, where local traditional products could be exploited.

In this way, the joint efforts of the public and private sectors will be crucial. Nevertheless, the main drivers of such efforts shall be organized producers who must not forget that appellations of origin are tools used to compete in the market, just like trademarks and other distinctive signs. Moreover, since appellations of origin are collective use signs, the key elements for their commercial use are successful partnership and the quality of the products identified. In that sense, any strategy to promote the use of appellations of origin in our country should consider these elements as central factors.

50 As noted in previous paragraphs, Indecopi, in the last two years, has been implementing significant outreach programs in order to disseminate the institution of appellations of origin. However, more resources are required as well as the involvement of other public or private entities to continue this effort.

CHAPTER 2

Inventions (Patents) and New Technologies



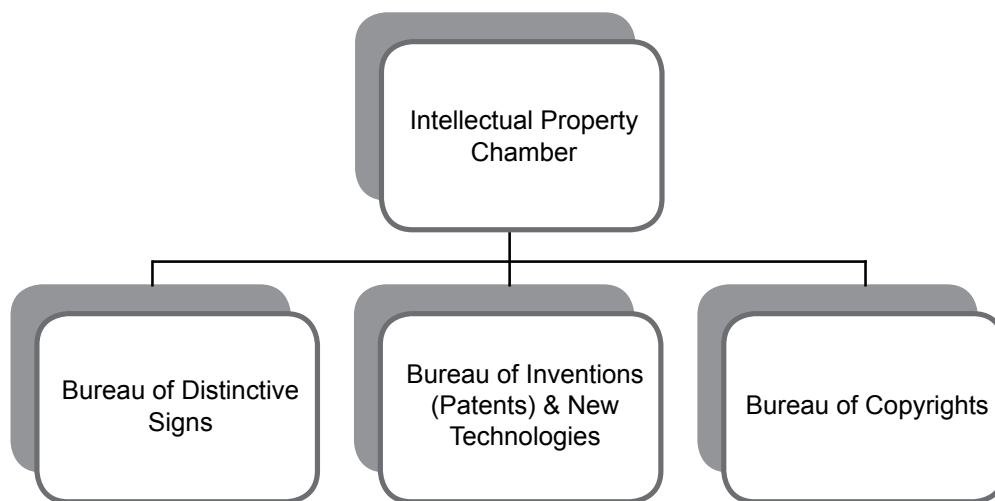
2.1. Department of Inventions and New Technologies⁵¹

2.1.1. Organizational Flow Chart

By virtue of Law Decree 25868, Law on the Structure and Duties of Indecopi, published on 24 November 1992, the National Institute for Defense of Competition and Protection of Intellectual Property (Indecopi) was established with the view of acting as an independent government agency charged with the defense of competition and the protection of intellectual property right in any of its forms. Indecopi was the first agency of its kind in the Region.

Based on the Law on the Structure and Duties of Indecopi, the agency would have separate bureaus for the protection of intellectual property rights, among them, the Bureau of Inventions (Patents) and New Technologies to be conducted by a Director appointed by the Board of Directors prior proposal by the Advisory Board. In addition, the Law established a Defense of Competition and Intellectual Property Court comprising –at its inception- two Chambers: one, the Intellectual Property Rights Chamber, responsible for examining challenges to the decisions rendered by the Departments.

Figure No. 7
Organizational Flow Chart – Department of Intellectual Property



⁵¹ This section was written by Bruno MERCHOR

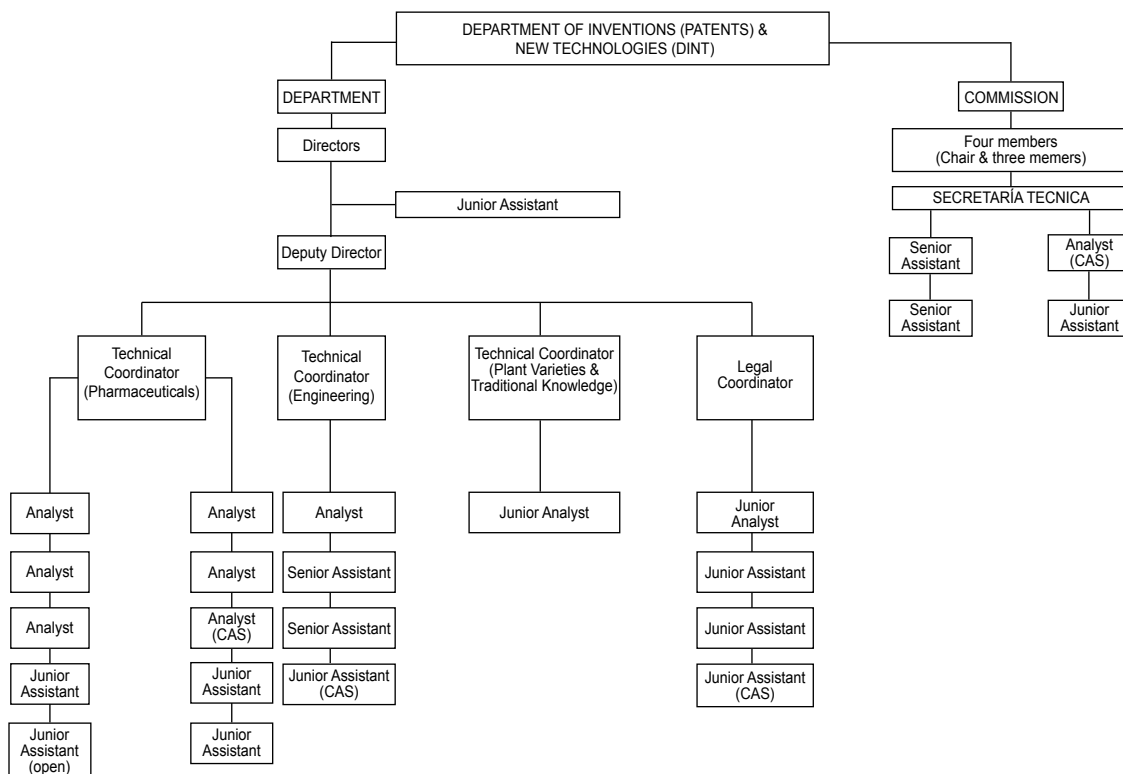


With the enactment of Legislative Decree 1033, published on 25 June 2008, approving the new Law on the Structure and Duties of Indecopi, this organizational structure changed in view of further strengthening the institution so as to face the tasks Indecopi would have to undertake as part of the implementation of the Peru-USA Trade Promotion Agreement.

The intellectual property area was divided into three Departments: Department of Distinctive Signs, Department of Inventions (Patents) & New Technologies, and Department of Copyright. The Department of Inventions (Patents) & New Technologies (DINT) is responsible for: examining and issuing decisions on matters related to invention patents, utility models, industrial designs, Layout-Designs of Integrated Circuits, and breeder's or creator of a plant variety certificates; ensuring protection of collective knowledge of indigenous peoples derived from biological resources; and promoting and disseminating the use of information contained in patent documents as sources of technical information.

In turn, each Department was divided into Intellectual Property Commission. Concerning the DINT, the Commission on Inventions & New Technologies is in charge of examining and making decisions on disputes arising in connection with intellectual property rights matters under the scope of the Department (oppositions, annulments by the agency or by third party, infringements).

Figure No. 8
Organizational Flow Chart
Department of Inventions (Patents) & New Technologies (DINT)



2.1.2. 1992 – 2012 Evolution of Laws

Decision 313 of the Andean Community Commission was the Andean law in force at the time Indecopi was created; such community decision established the Intellectual Property Community Law. According to this Decision, patent owners or holders were required to exploit the patented invention directly or through an authorized third party. By exploitation, the Commission meant the industrial production of the object patented or the comprehensive use of the patented process along with the distribution and marketing of the results obtained, as well as any import required to meet market demands. Patents would warrant 15 years of protection;



while utility models would offer 10 years of protection and industrial designs only 8 years of protection counted as from the filing date of the application. In addition, it is worth mentioning that in the case of industrial designs, registration of garment designs was forbidden.

In Peru, the domestic law in force in 1992 was Law Decree 26017, General Law on Industrial Property, which was enacted in accordance with Decision 313 of the Andean Community Commission, establishing the obligation for patent owner or holder to exploit the invention patented directly or through an authorized third party. Exploitation meant the industrial production of the object patented or the comprehensive use of the patented process along with the distribution and marketing of the results obtained, as well as any import required to meet market demands. Patents would warrant 15 years of protection; while utility models would offer 5 years of protection –this term could be renewed once for an additional 5 years. Moreover, in the case of utility models, the rules to grant protection required applicant to prove novelty, inventive step, and industrial application. In fact, even the invention procedures could be protected. Concerning industrial designs, the law only required novelty and industrial application.

Decision 344 of the Andean Community Commission entered into force on 01 January, 1994. This community rule excluded the possibility of patenting pharmaceutical products listed in the WHO Model Lists of Essential Medicines (World Health Organization). Moreover, this decision changed the protection timeframe for invention patents to 20 years counted as from the filing date of the application, while the 10- year and 8-year protection times would remain for utility models and industrial designs, respectively. We would like to mention that in the case of industrial designs, the restriction to register designs for garments remains.

On the other hand, Law Decree 26017 was repealed by Legislative Decree 823, Industrial Property Law, published on 24 April, 1996, which established a 10- year protection for industrial designs to conform to the provisions on minimum protection of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS).

Decision 344 of the Andean Community Commission was in force until 30 November, 1999 because Decision 486 of the Andean Community Commission entered into force on 01 December, 2000.

Decision 486 of the Andean Community Commission was passed so that Member Countries of the Andean Community could fulfill their obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which forms part of the Agreement

establishing the World Trade Organization (WTO), and which is binding for all WTO Member States, including Peru. This Agreement sets minimum standards on intellectual property rights; defines the main elements of protection; and contains provisions relating to the subject concerned, the rights conferred, the permissible exceptions to those rights, and the minimum duration of protection.

Decision 486 removed as an exclusion from patentability the pharmaceutical products listed WHO Model Lists of Essential Medicines (World Health Organization), allowing the patenting of pharmaceutical products. It also provides the following protection periods: 20 years for invention patents; 10 years for utility models; and 10 years for industrial designs. Also, it no longer contains the prohibition on registration of industrial designs relating to apparel. It also provides procedural rules and formal requirements to be met in the patent application procedure.

Decision 486 of the Andean Community Commission has been amended by Decisions 632 and 689. Decision 689 was issued at the request of Peru in order to introduce legislative changes needed to implement the Intellectual Property Chapter of the Peru-USA Trade Promotion Agreement.

The Peru-USA Trade Promotion Agreement signed 12 April, 2006, was approved by Congress Legislative Resolution 28766, published on 29 June, 2006 and ratified by Supreme Decree 030-2006-RE, published on 30 June, 2006. This Agreement entered into force on 01 February, 2009. Furthermore, the Protocol amending the Agreement was signed on 25 June, 2007 and approved by Congress Legislative Resolution 29054, published on 29 June, 2007.

Amendments to Decision 486 were made through Legislative Decree 1075, which includes supplementary provisions to Decision 486 (published on 28 June, 2008) and Law 29316, law amending, including, and regulating various provisions to implement the Peru-USA Trade Promotion Agreement (published on 14 January, 2009), amending Legislative Decree 1075.

As has already been noted, as a result of the implementation of the Peru –USA Trade Promotion Agreement, Legislative Decree 1075 was issued based on Decision 689, which authorizes Member States to further “develop and deepen” the provisions of Decision 486 and establishes a relaxation of the formal requirements for filing patent applications in connection with the powers-of-attorney, transfers, mergers, name changes, and procedures that do not require legalization.



The aforementioned Legislative Decree also contains provisions relating to the restoration of priority on the basis of the criterion of due diligence; sanctions to reckless oppositions; amendment to applications for omissions in incomplete descriptions, claims or drawings if such information is contained in the priority claimed, the procedure for compensation for unreasonable delays, and the Bolar exception.

Finally, as part of the commitments made in the Peru- USA Trade Promotion Agreement, Peru has acceded to the following rules already in force: the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure, the Patent Cooperation Treaty (PCT), and the International Convention for the Protection of New Varieties of Plants (UPOV Convention 1991).

2.2. Protection of Traditional Knowledge in Peru

Peru has been recognized as one of the 17 mega-diverse countries in the world⁵² and this is represented in the high number of species present in different taxonomic groups of plants and animals. Currently Peru ranks first in terms of species of butterflies (3,700), second in birds (1,835), fourth in amphibians (538), and fifth in reptiles (421)⁵³; Likewise, Peru is located in the Tropical Andes -one of the 25 Biodiversity hotspots considered priorities for global conservation they are home to unique endemic species⁵⁴.

Moreover, Peru has a great cultural and linguistic diversity, which responds to natural areas and is related to the economic structures deployed in the diverse towns (agriculture, livestock, hunting, fishing, farming, trade, crafts, and so on). Nevertheless, based on updated studies⁵⁵, we can affirm that Peru is home to 14 ethno-linguistic families and 72 ethnic groups⁵⁶. Based on a study conducted in 2010 on indigenous children -carried out jointly by the National Institute

52 MITTERMEIER et al. (1997). *Megadiversidad: los países biológicamente más ricos del mundo [Mega-diversity: the richest biological countries in the world]*. Mexico. Cemex-Agrupación Sierra Madre.

53 Ministry of the Environment (2011)

54 MYERS et al. (2000). "Biodiversity hotspots for conservation priorities". In: *Nature*. 403. 24 February, 2000. Available at: www.nature.com.

55 The Vice Ministry of Culture, under the ILO Convention 169 and for purposes of the implementation of the Law on Prior Consultation, is implementing an official database of Indigenous Peoples, for reference purposes.

56 MINAM. (2010). *Plan Nacional de Acción Ambiental PLAN AA-PERÚ 2011-2021 [2011-2012 AA-Peru Environmental National Action Plan]*. Lima.

of Statistics and Information (INEI) and the United Nations Children's Fund (UNICEF), a indicator measuring their learning of a native language, and the 2007 National Census, we have calculated a population of roughly over four million (4,045,713) of native people over three years of age, representing 16% of Peruvians in that age range.

2.2.1. Legal Aspects

The Convention on Biological Diversity (CBD) recognizes the dependence of indigenous and local communities on biodiversity and the extraordinary role of indigenous and local communities in the conservation of life on Earth. This recognition is enshrined in the preamble of the Convention and its provisions. It is for this reason that in Article 8 j) of the CBD, each contracting Party undertake to respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. In addition, given the relevance to the work of the Convention, the elements related to traditional knowledge of indigenous peoples and local communities have also been included in the work programs carried out under the Convention.

Through Law 27811, which became effective on 10 August, 2002, designates the Department of Inventions and New Technologies (DINT) of Indecopi as the national authority competent to examine and settle, in first instance, all disputes concerning the protection of the collective knowledge of indigenous peoples and the Intellectual Property Chamber is the second and final administrative instance.

The objectives of this Law are:

- To promote respect, protection, preservation, wider application, and development of the collective knowledge of indigenous peoples.
- To promote fair and equitable sharing of benefits derived from the use of that knowledge.
- To promote the use of this knowledge for the benefit of indigenous peoples and of humanity.
- To ensure that the use of knowledge takes place with the prior informed consent of indigenous peoples.
- To promote capacity building and development of indigenous peoples and the mechanisms traditionally used by them to share and distribute the benefits collectively derived under the present regime.



- To prevent granting patents for inventions made or developed from the collective knowledge of the indigenous peoples of Peru, without taking into account this knowledge as prior art in the examination of novelty and inventiveness of these inventions.

2.2.2. Activities Performed

While the law provides a number of mechanisms in order to achieve the objectives posed, we identified that one of the aspects that we could further boost was the registration of collective knowledge of indigenous peoples: first, because the law instructs Indecopi to manage and promote such concept, and second, because it is the starting point, paving the way for the implementation of other standard mechanisms seeking to achieve, ultimately, fair and equitable sharing of benefits through the recording of use licenses of collective knowledge -this would definitely bring about direct benefits to the indigenous communities.

For this reason, in 2004, Indecopi designed the Portal of Traditional Knowledge of Indigenous Peoples which to date contains 1,235 records linked to approximately 400 biological resources. Then, we devised a strategy to promote on-site registration so that communities themselves would register their traditional knowledge with Indecopi. Then, as of 20 March, 2006, by a proposal of Indecopi, the proceedings conducted under Law 27811 are exempted from any fee - Ministerial Resolution 076-2006-PCM, amending the Indecopi Single Amended Text of Administrative Procedures (TUPA).

Before giving details on the work of Indecopi in promoting on-site registration, it is important to note the characteristics of the register as per Law 27811. According to the Law, collective knowledge of indigenous peoples may be entered into three types of registers:

a) **Public National Register of Collective Knowledge of Indigenous Peoples.**

This Register comprises all the knowledge that is in the public domain, i.e., whether included in books, publications, and other means of mass communication. Similarly, this register may include any collective knowledge considered in applications for registration where the applying communities themselves declared such knowledge is public; and such collective knowledge which the Department, after its investigation during the processing and approval of applications, declares as such.

b) Confidential National Register of Collective Knowledge of Indigenous Peoples.

This Register consists of the knowledge still remaining within the realm of the communities and that, upon request, shall remain confidential. This knowledge may potentially be licensed with the consent of the communities themselves.

c) Local Registers of Collective Knowledge of Indigenous Peoples.

These Registers have been articulated according to the customs of the communities themselves in view of preserving them and they may even seek advice of Indecopi on how to structure such registers.

Indecopi is the custodian of the Public National Register of Collective Knowledge of Indigenous Peoples and the Confidential National Register of Collective Knowledge of Indigenous Peoples; while local registers of collective knowledge are run by the communities themselves.

Indecopi, within the scope of the powers established by Law 27811 and in order to implement such mandate effectively, has been conducting the activities listed above that have helped instill trust among the main beneficiaries. One of Indecopi's main actions in promoting collective knowledge has been to encourage on-site registration, which we explain below.

Considering the registration of knowledge, it is necessary to count with the agreement of the indigenous community to register their knowledge with Indecopi. In addition, it is necessary to provide the scientific name of the resource to which such knowledge is associated. Hence, Indecopi had to first implement mechanisms to enlighten awareness, through generation spaces of spaces for dialog and specialized material to disseminate the benefits of registration. Moreover, Indecopi had convene institutions that could help in its effort and facilitate the registration procedure for knowledge of indigenous communities, particularly those that could help in approaching indigenous communities and assist communities in providing the taxonomic identification of the resources to which such knowledge is associated.

For this reason, at first, this activity was focused on conducting pilot programs consisting in on-site registrations, which sought to promote the registration of collective knowledge as a means of preservation and, thus, contribute to Indecopi's defense of the interests of indigenous peoples. On-site registration pilot programs consisted in a team made up of Indecopi officials



and indigenous leaders visiting native rural communities in order to organize workshops to disseminate Law 27811 and to promote the registration of collective knowledge.⁵⁷

The first pilot was conducted between 17 and 28 February, 2006. The team visited five Yaneshas⁵⁸, Amazonian communities, located in the Department of Pasco. The team that participated in this activity consisted of three Indecopi representatives and three delegated of indigenous persons appointed by the national indigenous organization, the Confederation of Amazonian Nationalities of Peru (CONAP). The participation of indigenous delegates was suggested in an earlier workshop held in May 2005. Their involvement turned out to be critical because they helped in conducting prior coordination to the implementation of each workshop with the heads and leaders of the communities to be visited or organizations in the area, facilitating our approach to each of the communities and building trust in the process and the development of the workshops.

The second pilot was conducted from 17 to 20 April 2006. The team visited the native community Shipibo- Conibo of Junin in order to conduct a workshop for the dissemination and promotion of the Law 27811. It is here that the process starts with the filing of applications for registration by a party, with the support of the representative organization CONAP and the Peruvian Society for Environmental Law (SPDA).

Continuing with the activities set forth in the Project on the Implementation of Law 27811, on 20 and 22 July, 2007, we held two additional dissemination workshops in the Provinces of Huancabamba and Ayabaca in the Department of Piura. These workshops were intended mainly for members of the rural communities that are settled in this geographical area. We managed to convene and train 25 and 43 indigenous leaders, respectively.

Later, we scheduled two information workshops in the Provinces of Vilcashuamán and Guamanga in the Department of Ayacucho, held on 19 and 20 September, 2007. These workshops were also aimed primarily at members of peasant communities that are settled in these locations, managing to train 101 and 53 community members, respectively. This work was coordinated with the Center for Indigenous Cultures of Peru (CHIRAPAQ) and the Council of Indigenous Nationalities of Peru (CONAIP).

57 Using the methodology proposed in the *“Guidelines for conducting On-Site Registration Promotion Workshops”*.

58 Amazon Communities of Ñagazú, Santa Isabel, Hanswald, Huacamayo, and Enoc Flor de un Día.

In the year 2008, to continue the work of spreading the word on the Law, Indecopi and CHIRAPAQ arranged to hold an “Information Workshop on Law 27811 and Promotion of Registers” in La Merced, Junin, aimed at members of five native communities (Kivinaki, Lower Village, Shintoriato, Jose Galvez, and Atahualpa) of Perené and Mazamari, Satipo; all of them, belonging, in turn, to the Organization of Native Communities of the Central Amazon Region (CECONSEC). After these workshops, some of the participating communities actually filed their applications for registration and Indecopi facilitated the taxonomic identification process through the Department of Biology at the Agrarian University and the Museum of Natural History at the National University of San Marcos.

Following the line of work described above, since 2010, we have been developing joint actions with the Research Institute of the Peruvian Amazon (IIAP) in order to disseminate the scope of Law 27811 and to promote the on-site registration of collective knowledge in such areas where the IIAP had had some kind of approach while conducting its various research tasks and implementing projects related to the sustainable management of biodiversity in the Amazon. With the IIAP, Indecopi has strengthened its strategy to enable indigenous communities to register their collective knowledge with Indecopi. To this end, both agencies have appointed officials to be on the ground so as to inform them directly about the benefits of registering their collective knowledge and to answer all their questions. After this activity and when the community so decides, they assemble in a Community Assembly to decide on whether or not to register their collective knowledge.

After the community decides to register its collective knowledge with Indecopi, the team returns to the area to perform an on-site registration. The on-site registration fieldwork mainly consists in compiling and systematizing the information made available, frequently, by older adults who deeply about the biodiversity and by the women in the community. This is so because they are the ones who mostly preserve the knowledge inherited from older generations about the properties, uses, and characteristics of plants and animals that are part of its biodiversity.

Similarly during the month of February 2011, together with the IIAP, Indecopi scheduled a study trip to four Native Communities in Loreto, called Native Community of Brillo Nuevo and Native Community of Nuevo Peru, both of ethnic group Bora; Native Community of Nueva Esperanza, of the ethnic group Ocaina, and Native Community of Pucaurquillo, of the ethnic group Huitoto. During this work, we also trained three of the abovementioned communities on how to recover their collective knowledge so that it could be registered with Indecopi.



Prior to working with Indecopi, IIAP, through its Amazon Biodiversity Research Program (PIBA) and the Amazon Cultural Diversity and Economy Research Program (Sociodiversity), prepared a diagnosis and worked on recovering the Amazonian biodiversity. Such work consisted in empowering these communities on how to manage their resources in a sustainable way. This includes, among other things, the scientific identification of the resources in their environment (taxonomic identification).

As a result of this effort, on 13 July, 2012 Indecopi handed out 453 titles concerning the registration of collective knowledge to the native communities of Brillo Nuevo, Nuevo Peru, and Nueva Esperanza (Muruis and Boras). In order to do this, a group of Indecopi officials traveled to the communities (located in Loreto, Mariscal Ramón Castilla Province, District of Pebas, four hours by speedboat from Iquitos on the Amazon River). This ceremony in which titles were given (final stage of the registration administrative procedure) was performed with the participation of, among other officials, the Chairman of the Board and General Manager of Indecopi, illustrating the institution's commitment, at the highest level, to continue to support these efforts and thus generate value tools from Intellectual Property, in long forgotten populations like the native communities of the jungle.

Also, after transferring the titles of registration, two officials of Indecopi remained in the area from 14 to 17 July, 2012 to carry out fieldwork (on-site registration) in five new native communities of the Huitoto and Bora ethnic groups in the Ampiyacu Basin. As a result of this work, 596 new registrations concerning collective knowledge were filed by the indigenous communities of Murui de Estirón in Cuzco, Estirón, and Pucaurquillo, and the Bora native communities of Pucaurquillo and Betania. These applications are in the final phases of the process, so we should soon be scheduling a visit to the area to hand out titles, as part of the commitment we have undertaken with these communities.

This year, Indecopi has scheduled two more visits to native communities in the regions of Cusco and San Martín, and we have already received the minutes with the agreements of native communities from the San Martín region.

In this way, we are in front of a public management practice which has consolidated a virtuous circle in which the Competent Administrative Authority, through an inclusive, transparent, and fully participatory management model, the State approached them, managing to bring significant benefits to a group of people usually neglected by the State.

2.2.3. Major Outputs

In the table below, we show details of the results of the last year, 2012. (see Table No. 2):

Table No. 2
Registration of Collective Knowledge – 2012 Outcome

Details of the Activity conducted on 2012	Outcome
Promoción del Registro	<ul style="list-style-type: none"> • Ceremony to hand out 453 titles of registration of collective knowledge to a community of indigenous people from the Ocaina ethnic group and two Bora indigenous communities in the Loreto region. • Five Workshops about Onsite Registration held in July 2012 in the Region of Loreto, three Muri communities and two Bora communities. • Five Workshops about Onsite Registration held in December 2012 in the region of San Martin, to one Aguaruna and four Quechua - Lamista communities. • 885 registrations recorded with the National Register of Collective Knowledge of Indigenous Peoples, 492 of them in the Confidential Register. • 603 pending applications soon to be granted.



Table No. 3
Number of Applications Filed

N ^o	Year	# of applications filed
1	2006	3
2	2007	25
3	2008	114
4	2009	51
5	2010	343
6	2011	453
7	2012	695
TOTAL		1 684

Source: DIN

Table No. 4
Collective Knowledge Registers Granted

Year	National Public Register No.	National Confidential Register No.	National Confidential & Public Registers No.	Total Number of Registries Granted
2006	0	2	0	2
2007	0	2	0	2
2008	4	16	3	23
2009	15	50	0	65
2010	184	147	9	340
2011	178	275	0	453
2012	77	213	0	290
Total	458	705	12	1 175

Source: DIN

Table No. 5
Collective Knowledge Title by Native Community

Nº	Applying Native Community	Ethnic Group	Department	Number of Registries
1	CCNN Caco Macaya	Shipibo-Conibo	Ucayali	2
2	CCNN Callería	Shipibo-Conibo	Ucayali	12
3	CCNN Bajo Aldea	Asháninka	Junín	25
4	CCNN Kivinaki	Asháninka	Junín	26
5	CCNN Pakun	Aguaruna	Amazonas	203
6	CCNN Wawas	Aguaruna	Amazonas	137
7	CCNN Brillo Nuevo	Bora	Loreto	213
8	CCNN Nueva Esperanza	Ocaína	Loreto	128
9	CCNN Nuevo Perú	Bora	Loreto	112
10	CCCC San Antonio de Montecucho	Quechua	Ayacucho	4
11	CCCC San Juan de Chito	Quechua	Ayacucho	2
12	CCCC San Martín de Hercomarca	Quechua	Ayacucho	7
13	CCCC de Vischongo	Quechua	Ayacucho	14
14	CCNN Betania	Bora	Loreto	42
15	CCNN Estirón del Cuzco	Murui	Loreto	108
16	CCNN Estirón	Murui	Loreto	14
17	CCNN Pucaurquillo	Bora/Murui	Loreto	126
Total				1 175

Source: DIN

2.2.4. Reflections of Our Work

These activities implemented by Indecopi have captured the interest of the communities, creating opportunities for them to file for registration and instilling trust in the communities we have visited. In addition, the workshops have served to learn first-hand the perception that members of the various communities visited have about Law 27811; their prior knowledge on this subject; and their interest in registering their collective knowledge –this is embodied in an Agreement which is settled through a Community Assembly.



It also allowed us to identify strategic partners who could help us in the registration process, mainly with prior awareness and taxonomic identification.

With this in mind, it is necessary for us to reach out to other partner organizations seeking the same objectives: the protection of traditional knowledge. Hence, based on the good experience gained with the various institutions with which we have coordinated, we have been able to develop a transparent and clear work flow that translates into a new and creative public management model, which brought the registration procedure closer to key stakeholders, i.e. the indigenous communities. Only in this way has the process initially originated from outside, by Indecopi, become something promoted from within the community and has allowed its members to understand the importance of protecting their collective knowledge and has awakened their interest in implementing such mechanisms established in Law 27811.

This management practice, finally, allows the individuals themselves to gain invaluable benefits, since holding Registration Titles of their Traditional Knowledge allows them not only to defend themselves from any unauthorized use of their ancestral wisdom (and demand compensation for such unauthorized use), but also to preserve this knowledge preventing it from disappearing with time since they can continue to pass it on from one generation to the next.

In the words of Curaca [native leader] of the Native Community Pucaurquillo (Muruy - Huitoto), Mr. Alfonso Garcia Vega, in the ceremony to hand out titles held on 13 July, 2012: *“Dear brothers , we wish to thank Indecopi for having come all this way to deliver what is ours, all our wisdom we should be proud of and which is the only legacy that we will leave our children and grandchildren”*.

2.3. Las Patentes

Throughout history, humans have constantly been seeking to find solutions to all sorts of problems so as to satisfy their needs: first, to survive and, then, to improve their quality of life. At first, issuer were simple and common, such as moving objects from point A to point B, and developing tools or utensils for hunting or agriculture. Later on, when humans settled in cities, Mankind had to find solutions to more complex problems related to the preservation of food, water and power supply, developing new construction materials, and so on. Presently,

humanity faces much more intricate and sophisticated circumstances than those faced by ancestors and continues to strive to develop better tools to face such circumstances. Advances and new developments have been achieved in communications, mass transportation, and healthcare thanks to technology.

In this context, an invention is an idea turned into something tangible used to solve a technical problem in any scientific or technological field. Therefore, humanity has considered convenient to protect these technical solutions so that inventors may be compensated for their contributions to which they have contributed not only money, but also knowledge, experience, talent, among other variables, and the ultimate beneficiary is society at large. This protection to Man's creativity would take the form of "patents."

Creativity was analyzed by Mihaly CSIKSZENTMIHALYI in 1996⁵⁹, showing that this is the outcome of the culture of a community and not an isolated action of an individual.

The first patent ever granted dates back to 1421 in Florence to architect and engineer Filippo Brunelleschi⁶⁰. The patent gave him a three year monopoly for the construction of a flat-keeled boat with paddle wheels for for transporting heavy goods along rivers. In 1474, the first Law of Patents was published in Venice and as of the XVI Europe begins granting invention and manufacturing privileges.

In countries like Spain, Brazil, Mexico, and Chile, it is only in the 19th Century that the first patent laws are enacted.

Since then, most of the countries around the world have made efforts to count with a patent system and appropriate legal and technical framework, consistent with today's technologies. Organizations, treaties, conventions, and so on have been established in order to harmonize the different domestic and regional legislations, give guidelines on the implementation of laws of intellectual property and other protections mechanisms, streamlines procedures, international trade and so on –all of this driven by the globalization process, technological advances such as electronic trade, trade agreements, among others.

Developing countries, like Peru, clearly understand that a clear adequate legal framework provides inventors, whether domestic or foreign, security since their patents are duly protected

59 CSIKSZENTMIHALYI, Mihaly. (1996). *Creativity: Flow and the Psychology of Discovery and Invention*. New York, Harper Perennial.

60 Ver: http://www.oepm.es/comun/documentos_relacionados/Publicaciones/monografias/200_Anios_de_Patentes.pdf



from infringers. This brings about investment and economic growth as well as improvement in the quality of life of humans.

Considering that in developing countries, Research and Development (R&D) is feeble, patents should not be considered factors limiting technological development. Although the exclusivity rights of an invention patented in a given country should be respected, it is possible to take advantage of the valuable information contained in the patent applications and patents published in numerous databases and not registered in Peru. Indeed, considering that patent protection is limited to the territory where it is registered, any patent not registered in Peru may be exploited without infringing the rights of patent holders. On the other hand, patents are considered huge sources of technological and scientific information not only for exploitation purposes but also with the purpose of saving time and money on something that has already been invented; of knowing if a patent is eligible for registration compared to what is already known; of finding potential industrial partners; and, even, of learning about what our competitors are doing.

With this review of human inventiveness, we can observe that protection of inventions has evolved with industrial development and scientific research as well as with the globalization of human activities. This situation is especially important regarding pharmaceutical products, a good deemed a world heritage and that no country is willing to forgo any drug when its people need it.

2.3.1. The Patent System

The patent system begins with the industrial Revolution, period of time ranging from the 18th century to the beginning of the 19th century. We can affirm that one of the elements that detonated the creation of great inventions was –in addition to the free production and exchange established- the possibility of recognizing and granting rights to inventors to exclude third parties from exploiting such creations. This new context allowed for the creation of inventions which while enhancing the quality of life of humans, reshaped our communities for ever.

The foundations of the patent system and, in general, the grounds of intellectual property rights, are the engine and incentive driving innovation and technical advances, by providing legal protection to creative expression, within a system of free competition where, in principle, there should be no privileges or restrictions.

The logic of patents in granting an exclusive right rests in the possibility for creator/inventor to recover his investment –time, money, and effort- he has incurred in order to obtain the invention.

In 1994, in Marrakech (Morocco), the Ministers representing 124 countries that had taken part in the Multilateral Trade Negotiations of the Uruguay Round, among which was Peru, signed the Final Act of the Uruguay Round; thereby establishing the World Trade Organization (The WTO Agreement). The Agreement on Trade Related Aspects of Intellectual Property (TRIPS) is one of such agreements.

The Agreement on Trade Related Aspects of Intellectual Property (TRIPS) declares, among its objectives, “to promote effective and adequate protection of intellectual property rights” trying to balance between the long-term social objective of offering incentives for future inventions and creations and the short-term goal of allowing the use of existing inventions and creations. This entailed the introduction of minimum rules for the protection of intellectual property for all WTO members. These rules were more stringent than those already existing in many developing countries.

Before the adoption of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), international matters associated to Intellectual Property Rights (IRP) were arranged within the scope of the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). However, it was not until 1986 that a small group of countries led by the United States of America, Japan, the European Union included the IPR in multilateral trade negotiations resulting in the inception of the WTO.

The rules in the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) regarding patents, for example, mandate that the States must grant patent holders a minimum protection period of twenty years, including pharmaceutical patents, counted as from the filing date.

In order to lessen the adverse effects that patents could have on the cost of drugs, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) expressly obliges that, when enforcing the Agreement, Members “may adopt measures necessary to protect public health,” among which the Agreement considers the countries’ ability to use the flexibilities that are built into the TRIPS Agreement, including compulsory licensing and parallel importing.



2.3.2. Patent System in Peru

In November 1992, Indecopi established offices related to technical creations: the Office of Inventions and New Technologies and the Office of Technological Transfers, given the relationship it had with technology. Shortly after, Indecopi decided to join these two offices into the Inventions and New Technologies Office (INTO).

In August 2008, after the publication in the Official Gazette El Peruano published the new Law on the Organizational Structure and Duties of Indecopi, we began introducing changes to the organizational structure in view of building the institution. The changes entailed, among others, the inception of the departments of Copyright, Distinctive Signs, and Inventions and New Technologies within the Intellectual Property Area.

The change, which entered into force on Monday 25 August, 2008, also entailed the creation of the corresponding commissions to settle disputes.

Therefore, the Department of Inventions and New Technologies is the competent body to examine and settle, in first administrative instance, the applications for invention patents, utility model patents, industrial designs, protection certificates, collective knowledge of indigenous people, integrated circuits, and breeders of plant varieties.

Pursuant to Article 42 of the Law on the Organizational Structure and Duties of the National Institute for Defense of Competition and Protection of Intellectual Property, approved by Legislative Decree 1033, the Commission on Inventions and New Technologies, as part of the Department, is responsible for examining and settling, in first administrative instance, the disputes arising in connection with the registrations recorded with the Department (oppositions, annulments), including any claim for infringement to the intellectual property rights under the competition of the Department.

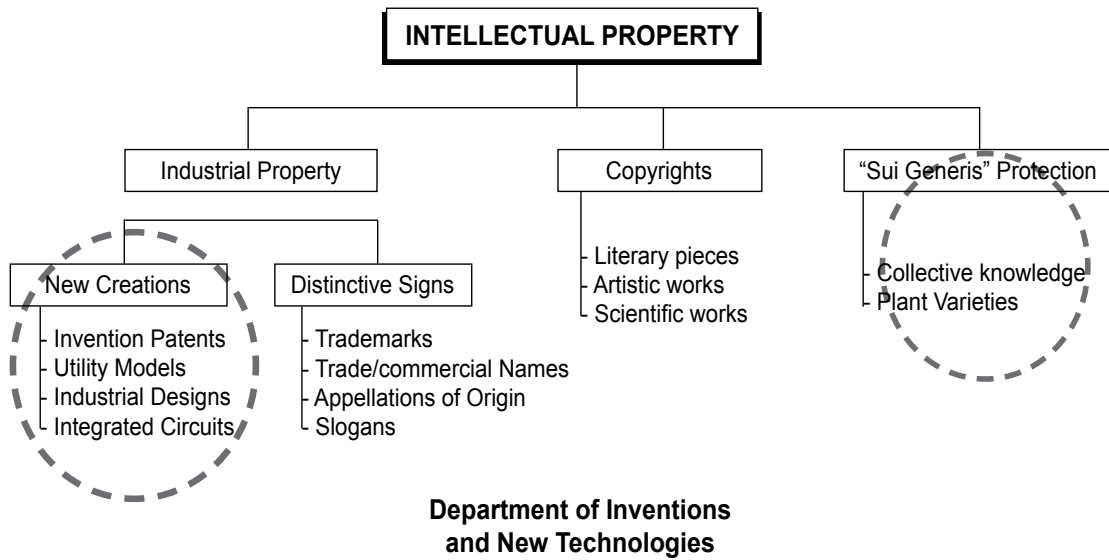
On the other hand, the Department is competent to record any amendment in connection with the registered rights, such as transfers, name change, change of address, use licenses, and so on. The Department is also responsible for keeping a list of the licenses regarding technology use, technical assistance, basic engineering and detailed engineering, management, and franchises from abroad.

Furthermore, the Department gives users different services such as Technological Information Search, Supply of Full Patent Document, Background Check, and guidance on how to properly submit an application for registration.



This Department is bound by the Law on the Organizational Structure and Duties of the National Institute for Defense of Competition and Protection of Intellectual Property, Decision 486 of the Andean Community Commission (Intellectual Property Community System), Decision 689 of the Cartagena Agreement Commission (Adjustment of certain Articles of Decision 486), Legislative Decree 1075, approving supplementary provisions to Decision 486, Decision 345 of the Commission on the Protection of Rights of Breeders of Plant Varieties, and Supreme Decree 035-2011-PCM.

Gráfico N°9
Intellectual Property Organizational Structure





2.3.3. Term of Protection available for Patents

Throughout history, the patent system has evolved and the legal standards have had to adjust to adequately face this reality. Nevertheless, rationality as clear at the beginning, as it is today.

Between 1987 and 1992, patents were granted for a term of 10 years, counted as from the approval date (Law Decree 22532). Initially, the term granted was 5 years, and owner had the right to extend such period for an additional term of 5 years, prior demonstration that the right had been exploited within the national territory.

As of December 1992, through Law Decree 26017, such term was amended to 15 years (counted as from the filing date), with the possibility for owner to expand such term for 5 more years.

Finally, with Legislative Decree 823 of 1996, the term of concession was extended to 20 years (counted as of the filing date).

2.3.4. Pharmaceutical Patents

Pharmaceutical patents (active principles) were not allowed until 1993. Before 1993, only procedures for obtaining these pharmaceuticals were protected. In some cases, applicants could achieve protection of their products through a process claim under the "product by process" mechanism, i.e. the product is characterized by a process.

In December 1991, Decision 311 of the Cartagena Agreement entered into force and repealed Decision 85, which for fifteen years had regulated industrial property.

Decision 311 came under tremendous criticism from the Department of Commerce of the United States and was replaced by Decision 313, dated 06 February, 1992, which was in force until December 31, 1993, when it was replaced by Decision 344 which, although already allowed the protection of pharmaceuticals, it excluded the products concerned in the WHO Lists of Essential Medicines.

Article 7e) of Decision 344 stated that inventions relating to pharmaceutical products appearing in the list of essential medicines were not eligible for patenting.

On 12 December, 2000, Decision 486 became effective and so remains to date. This rule allows protection in the form of pharmaceutical product patents (active principles), the procedure for obtaining thereof, and composition thereof.

However, it is noteworthy that on 06 June 6, 1997, Supreme Decree 010-97-ITINCI was issued. In the text of Article 4, it determined that: *“It is hereby clarified, in accordance with Art. 43 of Legislative Decree 823, that a different use from the one considered in the prior art shall be eligible for a new patent if it meets the requirements of Art. 22 of Legislative Decree 823.”*

Subsequently, the protection of the second use was banned by the Andean Community Court of Justice in Case 89-AI-2000, published in the Official Gazette 722 of 12 October, 2001, considering that only products or procedures are eligible for patenting.

In other words, Decision 486 allows to patent pharmaceutical products but does not allow patenting of second use for a product already patented because it seeks to avoid extending the term of twenty-year initially considered for patents.

Currently, pharmaceutical patents aim at protecting new active principles (products), novel pharmaceutical compositions (products), and new procedures.

2.3.5. Pharmaceutical Patents – New Medicines

Medicines are composed of one or more drugs, which are known as active ingredient (substance or component that produces a certain effect on the pathology diagnosed), and of excipients or substances (typically inert) used to give consistency to the formulation (in the form of tablets, capsules, syrups, drops, injectables, and so on); to mask flavors; to provide stability to the active principle until the expiration date of the medicine; and to ease administration to patients, among others.

An innovative or original medicine is one that contains a new active ingredient, obtained through a research and development process, where the manufacturing laboratory, holder of the rights, is marketed under a trademark name.

Once the patent rights expire, the active ingredients included in the innovative medicines can be marketed freely by different laboratories. This results in generic drugs, which is a product that has the same active ingredient, the same dose, the same dosage form, and the



same pharmacological characteristics as the brand name drug used as a reference.

The patent can only protect products or procedures, under this premise, in Peru, it is possible to patent chemical compounds with pharmacological activity (active ingredient), compositions containing an active substance (medicine), compositions containing plant and/or animals extracts, combinations or mixtures of active substances, methods of synthesis of active ingredients, process for obtaining a composition and methods of obtaining vegetable or animal extracts, but shows that almost all patents to date belong to foreign applicants.

To date, the only national patents correspond to compositions or methods, none provides a new chemical compound with pharmacological activity. This proves the huge asymmetry in the development of national patents compared to foreign patents in Peru (see Table 6):

Table No. 6
Pharmaceutical Patents by Nationality (Peruvian or foreigner) 1993-2011

Applications for pharmaceutical patents	8 630
Pharmaceutical patents granted	2 428
Pharmaceutical patents granted to Peruvians applicants	8
Pharmaceutical patents granted to foreign applicants	2 420

Table No 7
Pharmaceutical Patents filed Peruvian Applicants (1993-2011)

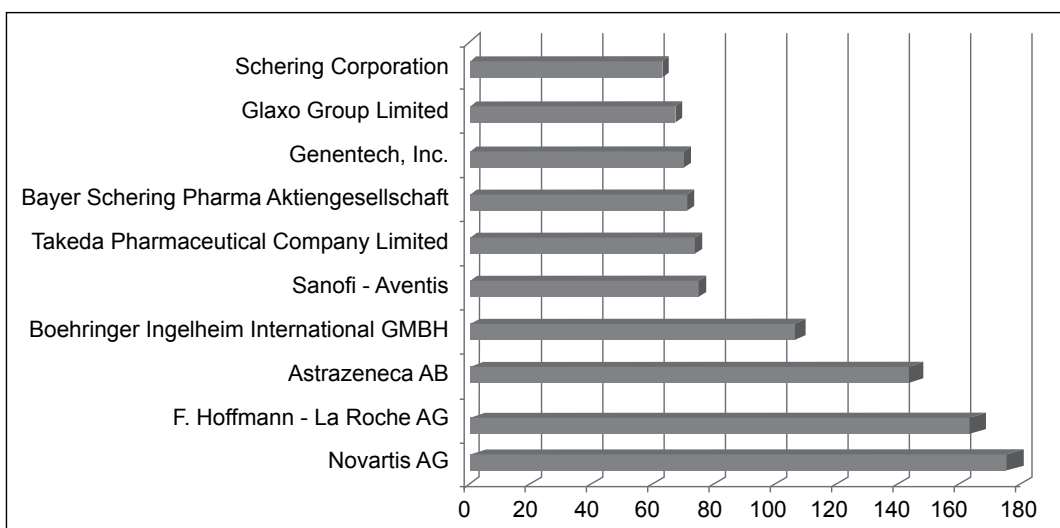
NAME	APPLICATION NO.	APPLICANT	TITLE	STATUS
Cysteine proteinases FAS1 and FAS2 for liver fluke parasites purification procedure and their use in detecting fascioliasis in Humans and animals.	000546-1996	Espinoza Babilon, José Ronald; Córdova Soto, Elizabeth Martha; Herrera Velit, Rosa Patricia; Universidad Peruana Cayetano Heredia.	1 192	Expired
Skin (dermal) cream	000713-1996	Palomino Cistire, Jesús Eduardo.	1 978	Expired
Antidote for topical use	001142-1999	Laboratorio Natural de la Selva SAC. Natusel SAC.	3 338	Expired
Dry Water-alcohol extract of LMH by Bika Orellana vaginal ovuli	000199-2000	Hersil S.A. Laboratorios Industriales Farmacéuticos.	4 361	Granted
Topical pharmaceutical compound comprising triamcinolone acetonide, papain, and glucose.	001164-2000	Vergara Lizárraga, Oscar Luis; Lanata Watson, Gonzalo Fausto A.	3 565	Granted
Methods for the isolation, identification, purification of seed, obtaining antigenic compounds, and preparation of the finished product called Vaccine for Local Strains of Ornithobacterium Rhinotracheale (ORT).	001305-2001	Bioservice SRL.	4 478	Granted
Method to separate using the extraction process curcumin, Dimetoxicurcumin, and Bisdimetoxicurcumin.	001205-2002	Morante Morante, Adolfo Fernando.	4 502	Granted
Procedure for the preparation of a nutraceutical drink as a food supplement, energizer, whose may input is sap of Musaceae plants.	000028-2006	Ramos Ledesma, Jorge Eduardo.	5 469	Expired



Table No. 8
Pharmaceutical Companies with the highest number of Applications
(2008-octubre del 2012)

	APPLICANT	N°
1	NOVARTIS AG	178
2	F. HOFFMANN- LA ROCHE AG	166
3	ASTRAZENECA AB	145
4	BOEHRINGER INGELHEIM INTERNATIONAL GMBH	107
5	SANOFI.AVENTIS	75
6	TAKEDA PHARMACEUTICAL COMPANY LIMITED	74
7	BAYER SCHERING PHARMA AKTIENGESELLSCHAFT	71
8	GENENTECH INC.	70
9	GLAXO GROUP LIMITED	67
10	SCHERING CORPORATION	63

Figure No. 10
Pharmaceutical Companies with the highest number of Applications
(2008-octubre del 2012)



In order to increase national patent applicants, this year, the Directorate of Inventions and New Technologies created the Deputy Directorate of Innovation (DPI), which provides counseling service before filing an application (identification of invention, drafting of technical document) and, after the granting of the title (negotiation and licensing), as well as information technology services (background search both domestically and internationally) and technical assistance.

It also created the new service "Fast-track Patent" and opted to continue organizing the "Invention Contest" for Peruvian inventors.

2.3.6. Fast-track Patent

Confirming its commitment to the promotion of creativity and inventiveness of Peruvians with concrete actions, in June 2012, the National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi) launched its new service "Fast-track Patent," giving Peruvian inventors the opportunity to obtain patents for their creations in half the current average time.

This service is aimed, in particular, to national inventors who have no experience in processing and drafting patent applications, which by requiring, according to law, specialized documents, are continuously observed for breach of formal requirements, substantive requirements, or lack of clarity in the description of the invention.

With the "Fast-track Patent" service, domestic inventors will receive one-on-one counseling by Indecopi, from the beginning of the process. If applicants take the advice and meet established requirements, inventors will be able to submit accurate documents, shortening the average term of 39 months to 18 months, approximately.

The "Fast-track Patent" is the outcome of the efforts of the institution to promote a culture of inventiveness in Peruvian society and to bring the national patents system closer to inventors with the objective of increasing national patents over foreign.



2.3.7. Inventions Contest

Since 1996, the Department of Inventions and New Technologies organizes the National Invention Contest; its 2012 edition, beat any previous editions by receiving 248 applications, thereby breaking the historical record of 131 nominations in 2006.

In addition to recognizing and rewarding the inventiveness of Peruvians, this contest aims to promote the registration of patents. From useful tools to complex technologies can be protected with this system, which gives between ten and twenty years of legal protection for inventions in all fields of technology. Thus, in this edition, Indecopi will fund all the inventions that passed the screening stage so that they can file patent applications. The 2012 National Invention Contest was carried out with the support of the USAID - Facilitating Trade Project.

The prizes and rewards given to the winner were:

- Full funding for the participation of the winning invention in the 2013 International Exhibition of Inventions of Geneva. If the participant is a team of inventors or a legal entity, the representative to the Contest shall designate in writing to the person who will represent the team or the legal entity at the Fair.
- Tailored advice of an expert consultant on technology transfer for the development and implementation of a business plan on the winning invention.
- Financing of all fees payable to INDECOPI for the registration of the winning invention. In the event that the application has already been filed, Indecopi will fund the outstanding registration fees.

2.3.8. Technical Assessment of Patent Applications

Whether filed by domestic or foreign applicants, all applications for registration of invention patents have been assessed by a patent examiner. Applications concerning pharmaceutical products are assessed by a professional pharmaceutical chemist who issues the corresponding technical report, in which he evaluates whether or not the application meets the three requirements for patentability of Decision 486, i.e.: novelty (Article 16), inventive step - non-obviousness (art. 18) and industrial applicability (Article 19). Depending on whether or not the patent application meets these requirements, the registration is granted or denied.

We should also take into account the exceptions to patentability set forth under Articles 15 and 20 of Decision 486. While any technical solution to a technical problem is an invention, not all inventions can be patented. According to Article 20 of Decision 486, the following are not considered patentable:

- inventions whose commercial exploitation in the territory of the respective Member Country should necessarily be prevented in order to protect public order or morality. To this end, commercial exploitation of an invention shall not be considered contrary to public order or morality just when they are stipulated in a legal or administrative provision that prohibits or regulates such exploitation;
- inventions whose commercial exploitation in the Member Country concerned should be prevented in order to protect the health or life of people or animals, or plant life or the environment. To this end, the commercial exploitation of an invention shall not be considered contrary to the life or health of people, animals, or for the preservation of the plants or the environment only if it is stipulated in a legal or administrative provision prohibiting or regulating such exploitation;
- plants, animals, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes;
- therapeutic and surgical methods for the treatment of humans or animals, and diagnostic methods applied to humans or animals.

Furthermore, Article 15 of Decision 486 states that the following shall not be considered inventions:

- discoveries, scientific theories, and mathematical methods;
- all or part of living beings as found in nature, natural biological processes, biological material existing in nature or which may be separated, including the genome or germplasm of any living thing;
- literary or artistic work or any other work protected by copyright;
- drawings, rules, and methods for performing intellectual activities, playing games or economic and business activities;
- computer programs or software, as such, and ,
- ways of presenting information.

a. State of the art

Assessment of a patent application involves gathering information (patent documents, scientific journals, other oral or written publications called state of the art) to prove that the patent application is novel and not obvious. Since its inception the Department of Inventions looked for the best way to access this information through information technology databases. In 1993, the information was in microfiche and CD-ROMs. In the following years, we had CD-ROMs with complete patent applications and patents granted by the European Patent Office.

With the advancement of technology, and the Internet, the databases of European Patent Office (ESPACENET), the Patent and Trademark Office (USPTO), the Japan Patent Office (JPO), the Spanish Patent and Trademark Office (INVENES) LATIPAT Database (requests for Latin American countries) and the Indecopi National Database were made available to the patent offices around the world.

To date, in addition to the aforementioned databases, there is free access to the patent databases: Patentscope WIPO, Google Patent Search, Patent and Trademark Office of China, and EBSCO databases, in which it is possible to have access to the full text of certain scientific publications.

b. Substantial Analysis

Just as we have improved our document retrieval system on the state of the art, over the years, we have been changing our assessment requirements for pharmaceutical patent applications. Considering that pharmaceutical patents are closely related to public health, demanding technical evaluation seeks to ensure that the scope of protection of the invention to be patented is clearly defined and adequately supported with the examples presented; that is, in fact, new; and that the inventive step is properly evidenced or proved.

On the other hand, pharmaceutical patents have also experience changes of criteria. Supreme Decree 010-97-ITINCI allowed the protection of a new use of a known chemical compound. This type of protection was banned by the Andean Community Court of Justice in Case 89-AI-2000, published in the Official Gazette 722 of 12 October, 2001, considering that only products or processes are eligible for patenting.

From 2009, the year when the Regulation on Access to Genetic Resources was approved by Ministerial Resolution 087-2008-MINAM, and subsequently by Supreme Decree 003-2009-MINAM in February 2009, an essential requirement for granting a pharmaceutical patent involving a Peruvian genetic resources is the presentation of the Agreement for Access to Genetic Resources, a document that is issued by the Peruvian government and, depending on the nature of the genetic resource, the agreement may be issued by:

- The National Institute of Agrarian Innovation [Instituto Nacional de Innovación Agraria] (INIA), in the case of cultivated species.
- General Directorate of Forest and Wildlife of the Ministry of Agriculture [Dirección General Forestal y de Fauna Silvestre], in the case of wild species.
- The Vice-Ministry of Fisheries of the Ministry of Production, in the case of aquatic species.

2.3.9. Pharmaceutical Patents and Public Health

As we have already stated, the patent system was created in order to promote innovation and also to provide a mechanism to ensure access of society to the outputs of such innovations. In the context of public health, policy makers are faced with the challenge of finding an optimal balance between the rights of patent holders, authors of technological innovations that improve health conditions, and the needs of the general public.

Generally, the development of new drugs requires large investments and long-term research and expensive clinical trials and regulatory approval procedures (such as the Health Registration granted by DIGEMID). The exclusive right conferred by a patent is one of the incentives that lead creators of new drugs to make the investments necessary to investigate.

The patent system also benefits society as it makes patent information available to researchers free of charge so that they may continue perfecting existing technologies.

In order to ensure access to patented technologies and facilitate their marketing, the patent system is mainly based on the granting of an exclusive right and is provided with a mechanism for voluntary licensing. However, in the public interest and the underlying policy objectives of the patent system, this system includes a number of flexible mechanisms, such as the possibility of compulsory licensing, exceptions for research purposes, and parallel importing.

Therefore, in the potential case of conflicts between patents and public health, the industrial property system provides the following flexibilities allowing the right to health to prevail over a patent right: Compulsory Licensing and Parallel Importing.

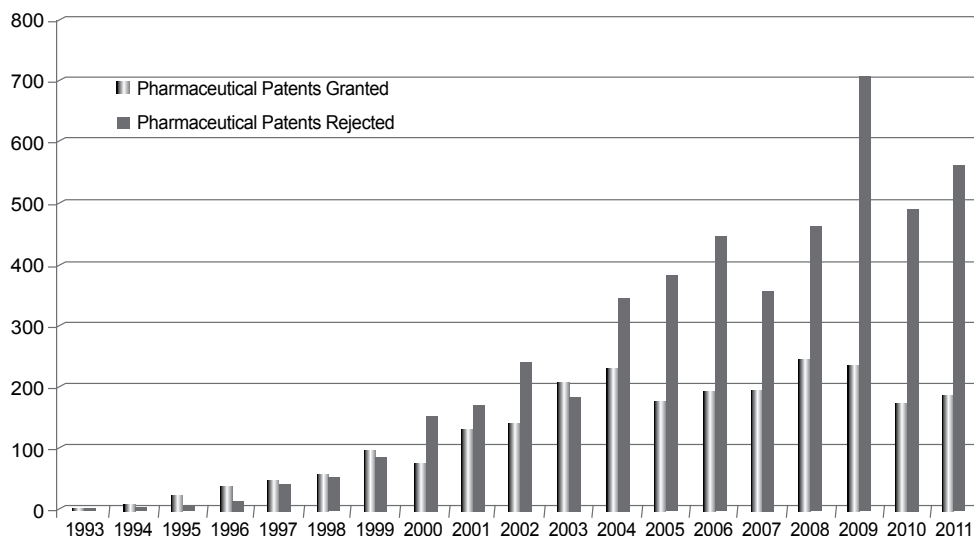
Compulsory licenses allow the use of a patent without the authorization of its owner when there are reasons of public interest or national emergency previously declared by the Ministry of Health, or when there are anticompetitive practices declared by the Antitrust Authority.

Parallel importing provides the opportunity for interested parties, including the State itself, in compliance with all applicable requirements, to bring to the Peruvian market original products lawfully entered in any other country in the world at lower prices, despite the existence of valid patent in Peru for the product.

We can conclude that in the field of Industrial Property, the patent system provides special mechanisms that allow for the right to public health against to prevail over a patent.

The greater or lesser use of these exceptions to Industrial Property responds to a political decision, mainly from health authorities.

Figure No. 11
Pharmaceutical Patents, Granted or Rejected (1993-2011)



**Table No. 9
Pharmaceutical Invention Patents Filed (1993-2011)**

Year	Pharmaceutical Patents	OTHER PATENTS	Annual Total
1993	43	247	290
1994	100	296	396
1995	148	399	547
1996	201	422	623
1997	280	535	815
1998	369	619	988
1999	423	576	999
2000	573	526	1 099
2001	603	412	1 015
2002	506	378	884
2003	576	371	947
2004	473	384	857
2005	688	387	1 075
2006	858	456	1 314
2007	910	497	1 407
2008	963	580	1 543
2009	687	577	1 264
2010	511	629	1 140
2011	129	264	393
Total	9 041	8 555	17 596

**Figure No. 12
Pharmaceutical Invention Patents Filed (1993-2011)**

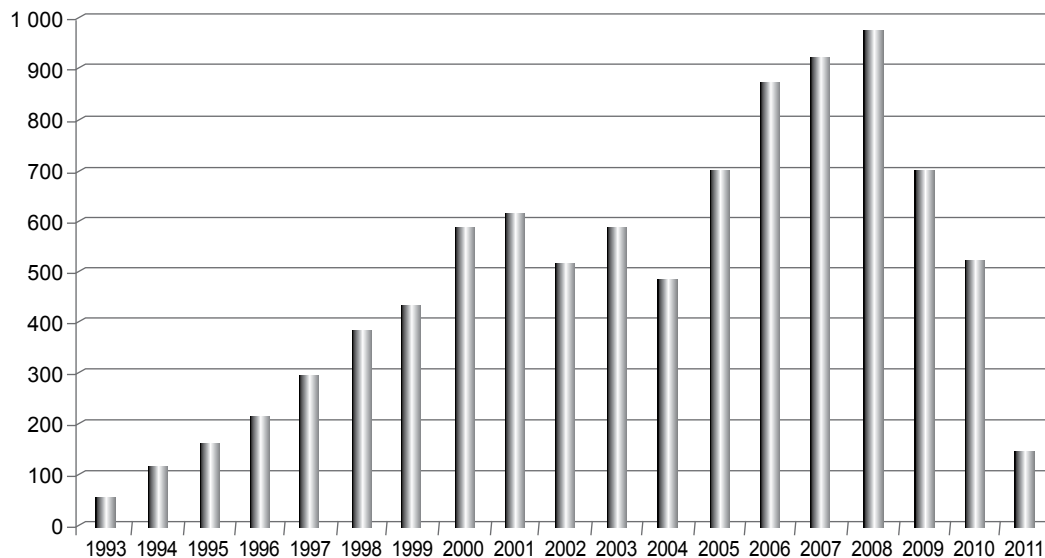
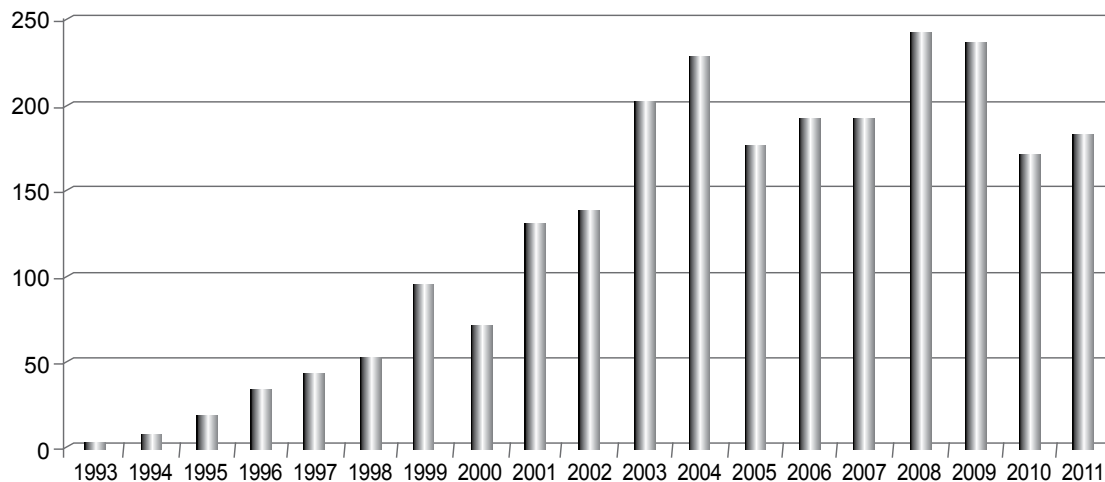




Figure No. 13
Pharmaceutical Invention Patents Granted (1993-2011)

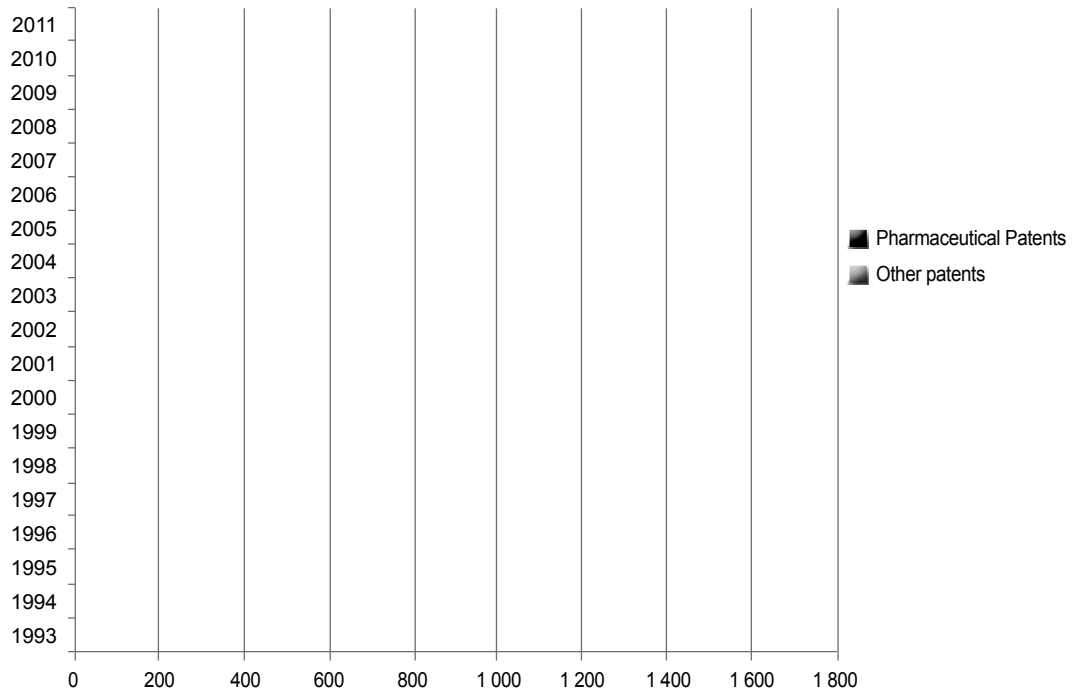


Cuadro N°10
Pharmaceutical Invention Granted (1993-2011)

Year	Pharmaceutical Patents	Other Patents	Annual Total
1993	3	111	114
1994	8	228	236
1995	20	256	276
1996	33	148	181
1997	43	137	180
1998	53	85	138
1999	96	175	271
2000	72	236	308
2001	131	406	537
2002	140	410	550
2003	204	340	544
2004	229	276	505
2005	177	199	376
2006	192	117	309
2007	193	134	327
2008	243	115	358
2009	237	147	384
2010	171	194	365
2011	183	202	385
Total	2 428	3 916	6 344

Source: Department of Inventions and New Technologies

Figure No. 14
Pharmaceutical Invention Patents Filed (1993-2011)



CHAPTER 3:

Copyright



3.1. Copyright: a Conceptual Framework⁶¹

In recent years, the economic and cultural importance of Copyright has increased significantly and this is due to several reasons. One of the most important reasons justifying this phenomenon is the technological development we have experienced since the late 20th century and the first decade of the 21st century, both general and special areas. Inventiveness and creativity have been the constant source of all kinds of new products and services introduced in the world market and, to ensure its continuity and development, it is necessary to empower the creator and his creative work.

International trade in products protected by Copyright is booming worldwide and both developed and developing countries have recognized that, in order to participate in the profits of that trade, such intellectual property rights must be protected by all. Many international instruments on trade, like the TRIPS Agreements, prove the importance currently attributed to the protection of intellectual property and particularly to Copyright as an element contributing to the international flow of goods and services.

Therefore, it is not surprising for Copyright to be present in most commercial trading negotiations worldwide. In the last decade, Peru has participated in the field of international negotiations both subscribing Trade Promotion Agreements and actively participating in various trade blocs.

In this sense, Peru has signed the Trade Promotion Agreement with the United States, whose Article 16 introduces the concept of Copyright and Related Rights, establishing common obligations to Copyright and Related Right, effective Technological Protection Measures, and protection of Programme-Carrying Signals Transmitted by Satellite, establishing obligations to criminalize some forms of infringement thereof.

Moreover, Peru has been part of the negotiation of the Trade Promotion Agreement with the European Union and continues to participate in various rounds of negotiation under the Trans-Pacific Partnership Agreement (TPP). Also, within the Asia-Pacific Economic Cooperation Forum (APEC), Peru is an active member along with the other countries of the

61 This section was written by Martín MOSCOSO VILLACORTA and Rubén I. TRAJTMAN KIZNER.



Pacific Rim; and presently, Peru has concluded agreements with countries like South Korea, Japan, China, Singapore, Canada, Panama, among others.

In addition, the international legal framework of Copyright and Related Rights is becoming more complex and consists of the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), the recent Beijing Treaty on the Audiovisual Performances, among other treaties. We also have Andean supranational legislation on Copyright and Related Rights in the Andean Decision 351.

Peru has a fairly modern legal framework on this matter, through which holders of Copyright and Related Rights may file civil, administrative, and criminal lawsuits if their rights are breached. The administrative proceeding includes the ability to report violations and obtain rights accrued as a result thereof.

According to an economic studies conducted by the School of Economics of the Pontifical Catholic University of Peru upon request of WIPO and Indecopi, the Copyright and Related Rights industry accounts for 2.6% of GDP and 4.5% of total national employment.

Traditional cultural industries have a distinct stage of development: the domestic software industry has grown in sales and export of its services after the implementation of the Software Industry Competitiveness Support Program (PACIS), financed by the Inter-American Development Bank (IDB). The average growth over the past five years is 9.1 % and the cumulative figure for 2005-2010 is 54.12%.

The publishing industry continues to experience significant growth as a result of promotional activities under the scope of the Law on the Democratization of Books and Reading; in developing these standards, we counted with advice from the Regional Centre for Book Development in Latin America and the Caribbean (CERLALC). The figures show an average growth of 11.08% over the last five years, allowing for a growth of 68.36% in a 5 year period.

The audiovisual industry is only starting and national audiovisual production counts with support from the State, through DECINE (formerly, the National Film Board of Peru, CONACINE), Area Unit of Cultural Industries of the Ministry of Culture, which has a budget for the financing of films in long and short formats. The music industry, on the other hand, has been hit by the music piracy by 98 %.

As for emerging cultural industries, film animation, creation and production of video games, theater productions, and musical concerts are promising.

Concerning collective actions, two groups have experienced frank development: the Peruvian Association of Authors and Composers [Asociación Peruana de Autores y Compositores] (APDAYC) earnings have increased from S/. 19 million five years ago to more than S/. 50 million in 2012, while the revenue of the Society of Phonographic Producers [Sociedad de Productores Fonográficos] (UNIMPRO) is S/. 14,500,000. The Society of Artists and Performers [Sociedad de Artistas, Intérpretes y Ejecutantes] (ANAIE), after a period of stagnation, has allowed for the creation of two new societies of artists: the National Society of Music Performers [Sociedad Nacional de Intérpretes y Ejecutantes de la Música] (SONIEM) for those engaged in the music industry and INTERARTIS for those engaged in the audiovisual industry. These two new societies are in their inception phase. There is also the Audiovisual Producers Association [Sociedad de Productores Audiovisuales] (EGEDA PERU), currently undergoing restructuring, and the Society of Visual Artists [Sociedad de Artistas Visuales] (APSAV) –a promising organization.

Regarding infrastructure, the Virtual Registration platform is now completed. This platform will allow to file for registration online; hence enabling creators inside the country and abroad, to save time and money in obtaining their certificates of registration of works and productions.

We have planned to digitize Copyright certificates in order to facilitate their search and detection.

As for the National Archives on Copyrights and Related Rights infrastructure, we are planning on expanding the registration infrastructure in order to prepare it for the needs of the next five years.

Additionally, we have planned to conduct a study of piracy levels and its impact on the economy and taxation.

As far as promotion is concerned, the Department of Copyright proposes developing competitiveness plans for major cultural industries: audiovisuals, musical, and publishing.

We have been identifying emerging cultural industries to develop a diagnosis of their degree of development.



In view of the existing cultural wealth in different regions of Peru, we have plans to promote the registration of works by region, by promoting a work plan aimed at encouraging the registration of works based on differentiated regional needs.

Regarding Collective Management, the Department of Copyright has been coordinating with the collective management entities, the development and monitoring of a Single Window Program for Collective Management, and the development of a study on the criteria to determine fees to be applied to the collective management, including the development of a Best Practices Manual on Collective Management.

As far as enforcement is concerned, Indecopi continues with training programs for judges and prosecutors.

The Indecopi Copyright Department is the competent authority responsible for the work and surveillance against activities that infringe Copyright and Related Rights rules.

In its fight against piracy, the Copyright Department has been devising various strategies and operational plans to counter this crime. Thus, this area, along with the National Tax Administration (SUNAT), the National Police, the Ministry of Defense, and the Ministry of Interior, among others, is a member of the Central Command for Combating Customs Offenses and Piracy. In turn, this inter-agency group is part of the National Commission mentioned above. It is charged with coordinating joint actions and the adoption and implementation of mega operations in reproduction and/or distribution centers of pirated products.

The Public Ministry has created three Prosecutors Offices specialized in Customs Offenses and Crimes against Intellectual Property: one in Lima, a second one in Callao, and the third one in the North of Lima, which conduct their activities within the powers vested upon them by the Organic Law of the Public Ministry and the criminal law.

In order to learn in depth about the application of criminal and administrative sanctions, we need to develop an interconnected database of criminal and administrative proceedings and the penalties applied in piracy cases.

Recently, the creation of a web page "Buy legal, buy an original," through which consumers have access to information on the legal supply of cultural products, is the beginning of a campaign to channel the public demand towards legality, for which we shall continue to develop activities for the promotion and dissemination of original products.

In short, the agenda is large and challenges huge. However, creativity and originality -national traits, coupled with a culture of greater respect for legality and formality, will be the basis of the construction and development of strengthened and competitive cultural industries that have become vehicles to disseminate the image of our country and our cultural resources to the current globalized world, eager for consumption and diversity. This is the work in which we are engaged.

3.2. Copyright Law: Evolution in Peru

In 1991, the new Criminal Code included a special chapter on Crimes Against Copyright (Article 216 to 221), establishing jail time and fines, among others, against those who entirely modify a piece of work; those who reproduce a piece of art in full or in part, by any means or process; those who a piece of work by selling or leasing it or by public lending; those who publicly communicate or disseminate such work by any means or process; or those who reproduce, distribute or communicate such work in a greater number of copies than those originally authorized in writing.

With the legislative reform of 1996, when Legislative Decree 822, Law on Copyright, was enacted, the maximum applicable jail time was raised to eight years. Law 27729, amending Article 216 of the Criminal Code, promulgated on 02 May, 2002 and published on 24 May in the official gazette El Peruano, amended several articles of the Criminal Code, including those relating to offenses against intellectual property.

In 1996, Legislative Decree 822 modernizes the law on copyright, adapting to the rules of Andean Decision 351 of the Andean Community as well as to new international trends, including the impact of new technologies and the digital era.

Law 28571, amending Articles 188 and 189 of Legislative Decree 822, enacted on 06 June, 2005, established new penalties that the Indecopi Copyright Office may impose, jointly or separately, such as admonition; fines of up to 180 tax units or UIT (currently equal to S/. 612,000 or U.S. \$ 182,687); temporary closure of the premises for up to 90 days; closure; definitive seizure or confiscation of infringing material; and publication of the resolution at the expense of offender.



Article 176 and suite of Legislative Decree 822 establish the powers of the Indecopi Copyright Office to issue various preventive or protective measures, such as seizures, unannounced inspections, cessation of illegal activity, among others.

Law 28289, called Law on Combating Piracy, enacted on 20 July, 2004, amending Article 217 to 219 of the Criminal Code. This amendment increases the legal minimum amounts established in the criminal laws, from two to four years of prison time for those who infringe copyrights of reproduction, distribution, and public communication. The legal maximum is eight years. By mandate of the Law, the Commission to Combat Customs Offenses and Piracy was established and determined its functions and providing the infrastructure and resources necessary for operation. Furthermore, this Law entrusts the National Customs and Tax Administration (SUNAT) with the duty of registering natural or legal persons importing, producing or distributing equipment or machines to copy musical or audiovisual works contained into empty optical discs and any other input or raw material produced in Peru or abroad which can be used to produce, process, and market sound and video recordings.

The Regulation of the National Register of Copyright and Related Rights, adopted by Resolution 0276-2003/ODA-Indecopi of 05 December, 2003 and published in the official gazette El Peruano on 31 December, 2003 is intended to be a means of advertising and prior evidence. This regulation further establishes the procedure for the registration of works and other intellectual property creations, exploitation contracts for equity rights, actions by collective management societies, such as statutes, regulations, and other.

Regarding software protection (Articles 69 to 77 of the Copyright Law) and databases or data compilations, Legislative Decree 822 recognizes its broad protection. The protection granted under Article 78 of the abovementioned Law does not extend to data, information or materials compiled therein, without affecting any rights subsisting in the works or materials therein. As for non-original databases, no standards on this regard have yet been established under Peruvian law.

As for the use of software in the Public Administration, Supreme Decree 013-2003, enacted on 13 February, 2003, as amended by Supreme Decree 077-2008-PCM, sets out the measures to be followed in order to ensure the legality of computer software purchases by public institutions and agencies. This law charged Indecopi, in coordination with the National Institute of Statistics and Information (INEI), to prepare a Guide for Efficient Management of Legal Software Programs in the Public Administration. This guide has been developed and

published in coordination with the Office of E-Government of the Presidency of the Council of Ministers. Some of the general guidelines on the use of software include those listed below:

- All software developed by the institution must be reviewed and approved by the IT Office. We also suggest its registration with the Indecopi Copyright Office.
- Each user must only use the software installed by the IT Office. This software is installed in accordance with the User's Profile, as determined by the kind of activities he performs.
- The IT Office of the institution must constantly evaluate programs and/or upgrades in the market for possible technological inclusion in the list of standardized programs. A user can have more than one User Profile.
- No one will be allowed to install any program not included in the User Profile, even if such programs are legal and belong to the user, except in cases authorized by the IT Office with the license or certificate of authorization for use of the manufacturer, and further proving that they are used for a short term and producing evidence of its usefulness to perform the work assigned. This is also applies to the so-called "freeware" and "shareware" programs, except in the latter case, which must be removed after completion of the test period.

Peruvian law recognizes related rights corresponding to radio broadcasters (Article 140 of Legislative Decree 822) and other related rights of artists and performing artists (Article 131 to 135 of Legislative Decree 822) and the producers of phonograms (Article 136 to 139).

The Law of the Artist, Performers, and Entertainers (Law 28131) and its Regulation (Supreme Decree 058-2004 PCM) were also passed.

The Democratization of the Book and Reading Promotion Law (Law 28086) and its Regulations (Supreme Decree 008 -2004- ED) has also been passed..



3.3. Promotion Campaigns

3.3.1. Intellectual Property Week

The World Intellectual Property Organization (WIPO) designated 26 April as the World Intellectual Property Day. On the other hand, UNESCO has designated 23 April as the World Book Day. Indecopi annually organizes activities such as Public Destruction of Pirate Works, as well as the traditional Public Awards Ceremony for Authors, Producers and Artists.

Since 2001, the following persons have been given awards:

2001

1. Esmeralda Gonzales Castro, "Serafina Quinteros".
2. Carlos Soto de la Colina, "Caito Soto".
3. Adrián Flores Albán.
4. Lorenzo Humberto Sotomayor.

2002

1. Alicia Maguiña.
2. Luis Abanto Morales.
3. Oscar Avilés Arcos.
4. Jorge Oswaldo Reynoso Díaz.
5. Jorge Pérez, "El Carreta".

2003

1. Jorge Salinas.
2. Gustavo Rodríguez.
3. José Vidal.
4. César Muroyama.
5. Visual Soft S.A.C. (Richard Velásquez).
6. Susana Baca.
7. Gian Marco.
8. Líbido.
9. Eva Ayllón.
10. Dina Paucar.
11. Carlos Rincón.

12. Erasmo Díaz.
13. Leslie Lee.

2004

1. Johnny Schuller.
2. Gastón Acurio.
3. Pontificia Universidad Católica del Perú.
4. Camila Kusi Valdeavellano.
5. Manuel Núñez Mesones.
6. Jean Paul Strauss.
7. Grupo ZEN.
8. Victoria Santa Cruz.
9. Zenobio Dagha.
10. Fabrizio Aguilar.
11. Carlos Eduardo Zavaleta.
12. Eduardo Adrianzén.
13. Carlos Alberto Gonzales.
14. Bruno Pinasco.

2005

1. Alfredo Gordillo (Empresa Gran Cruz).
2. Carlos Rubini (Vitivinícola Ocucaje).
3. William Temoche Solís (Inversiones Poseidón - Viejo Tonel).
4. César Muroya Umesaki.
5. Instituto Nacional de Salud.
6. Raúl García Zárate.
7. Javier Silva.
8. Hacker Antivirus.
9. Hernán Garrido Lecca ("Piratas en el Callao").
10. Cecilia Barraza.
11. Lucila Campos.
12. María Jesús Vásquez.
13. Juan Acevedo (Historietas OMPI - Indecopi).

2006

1. Félix Figueroa.
2. Alberto Haro Haro.
3. Guillermo Riofrío.
4. Juan Castro Nalli.
5. Carlos Gassols.
6. Augusto Polo Campos.
7. Edith Barr.
8. Jose Escajadillo.
9. Pepe Miranda.
10. IEMPSA.

2007

1. Miki Gonzales.
2. Blanca Varela.
3. Francisco Lombardi.
4. Jorge Tafur.
5. Amelia Weiss.
6. Raúl Vásquez Rengifo.
7. Hernando Cortés Mendoza.
8. José Valdés.

2008

1. Albino Canales.
2. Damaris Mallma.
3. Phantom Music.
4. Michelle Alexander.
5. Lucía Irurita.
6. Verónica Pacheco.
7. Elmer Yaipén.

2009

1. Rulli Rendo.
2. Carlos Oneto.
3. Christian Bendayan.
4. Grupo Cinco.

2010

1. Sergio Bambarén.
2. Eduardo Schultz.
3. Teleserie "Al Fondo Hay Sitio".

2011

1. Denominación de Origen Maca de Junín y Pasco.

2012

2. Vania Masías.
3. Eduardo Schuldt ("Los Ilusionautas").

3.3.2. Anti-Piracy Crusade

Since was established in 2003, the Department of Copyright has spearheaded an Anti-Piracy Crusade –a joint public-private effort to combat audiovisual piracy. This has helped reduce piracy in this sector by 12% in 2006-2011, thanks to the targeted control strategies and public awareness campaigns to highlight the importance of respect to Copyrights.

3.3.3. Cinema Day

The second Sunday of November, the Anti-Piracy Crusade has been promoting tickets for S/. 4 to movie theaters nationwide; thereby generating expectations among the public to access products and services legally.

In 2012, we held the ninth edition of Cinema Day, with a record of 280,765 viewers nationally, with an occupancy level of 73.58%, exceeding last year's figure by 23%.

3.3.4. Buy legal, buy an original

The website "Buy legal, buy an original" is a technological tool that allows users to access a variety of information related to the illegal activities of piracy, counterfeiting, and smuggling; the legal mechanisms available for the protection of creations; and information about the places or formal establishments that offer original legal products or services. This new platform allows all formal companies to sign up to offer their services or sell original products in the Peruvian



market, by offering their contact information. Consumers, by visiting the webpage "Buy Legal, Buy an Original," can access and choose the best option to acquire original products, in open opposition to piracy, counterfeiting, and smuggling. "Buy Legal, Buy and Original" is an initiative of the National Commission for Combating Customs Offenses and Piracy in the Ministry of Production and Indecopi, with the support of the USAID "Facilitating Trade" Program, in a joint effort to spread useful information for all users interested in purchasing original cultural products and formal services.

3.4. Implementation of the Negotiation Accord concerning the U.S.A. Trade Promotion Agreement

The legislative framework comprises the set of domestic laws and international agreements signed by Peru regarding Copyright. Within the scope of the Peru-U.S.A. Trade Promotion Agreement, Peru has implemented the agreements and commitments accorded, entailing the legislative reform of 2008 on Copyright and Related Rights, including aspects related to Technological Protection Measures and Border Measures. Legislative reform includes the amendment the Peruvian Criminal Code and the legal framework on border measures for the protection of Copyright and Related Rights, including its Regulations.

The Department of Copyright participated in the initial formulation of the proposal, the deliberations with various government agencies involved, and the drafting of the final proposal.

3.5. Virtual Register

The Copyright and Related Rights online registration system, which is available to Indecopi users, is a tool 100 % made in Peru thanks to the work of Information Technology Office upon request of the Indecopi Copyright Department.

This system is another contribution to the process of modernization of the State, which is intended primarily for Peruvians living abroad and authors living in the provinces of Peru.

It is also a contribution of Indecopi to Electronic Government and mechanism to take services to citizen by using information technologies.

3.6. Registration in Just One Day

This product allows users to have access to the registration services of the Department of Copyright, who fulfill the requirements, to obtain the corresponding registration in a simplified way.

Approximately 65% of the registrations of literary works granted during the period has benefited from this service, achieving full customer satisfaction since they were able to get their work registered in record time.

3.7. Educational Project on Copyrights

With support from the USAID Trade Facilitation Project and the Regional Centre for Book Development in Latin America and the Caribbean (CERLALC), and in agreement with the Ministry of Education, the Department of Copyright has been developing the pilot project called "Learning to Create: Promoting a Culture of Respect for Intellectual Property." This project is being implemented in Iquitos, Piura, Arequipa, Chiclayo, and Lima, and is expected to reach out to 100 schools, 600 teachers, and 21,000 students. They will be trained on Copyright by using materials such as cartoons, DVD, educational guides for teachers, guidance for new developers, among others, which has been recognized as Good Government Practices by Ciudadanos al Día (CAD), certifying it as an educational project.

3.8. Activities

3.8.1. Activities to Reduce the Illegal Use of *Software* in the Public Sector

As for the unauthorized use of software by the public sector, there has been a reduction of 30% due to the implementation of Supreme Decree 013-2003- PCM, as amended.

Permanent participation of the Department of Copyright in international negotiations procedures to negotiate trade promotion agreements (TPA) with other countries and economic blocs and implementation of the legislative framework.



The Department of Copyright has actively participated in the calls made by MINCETUR and has contributed to the discussion of the sections on Copyright and Related Rights. In addition, it has actively been involved in the negotiating rounds for the implementation of the intellectual property chapters in the various trade agreements: China, Japan, South Korea, European Union, and EFTA (Switzerland, Norway, Iceland, and Liechtenstein) and the Trans Pacific Partnership (TTP), presently under negotiation.

3.8.2. Enforcement Actions

a. Increased seizures of infringing goods for U.S. \$ 58 million

During 2006 and 2011, Indecopi has been seized illegal material as a result of inspection activities, for a total amount of S/. 167 million, roughly U.S. \$ 59 million.

The table below is based on the results of the actions initiated upon petition of interested party or directly by the Department of Copyright.

Detailed descriptions of the illegal goods seized including their respective recovery are included as annexes⁶².

62 Seizures and recovery Tables for 2006, 2007 , 2008 , 2009, 2010, and 2011.

Table No. 11
Assessment of Seized Material, Consolidated (2006 to 2011)

	SOLES	DOLLARS
MATERIAL SEIZED IN 2006	7 088 395	2 517 186
MATERIAL SEIZED IN 2007	23 174 061	7 524 046
MATERIAL SEIZED IN 2008	24 731 066	8 029 567
MATERIAL SEIZED IN 2009	32 971 210	11 568 845
MATERIAL SEIZED IN 2010	61 801 468	21 993 404
MATERIAL SEIZED IN 2011	17 444 435	6 252 486
TOTAL	167 210 635	57 885 534

b. Oversight of Collective Management Societies of Copyright and Related Rights

The Department of Copyright, in exercising its oversight duties on Collective Management Societies of Copyright and Related Rights, has ordered the initiation of ex officio actions against authorized entities such as the Peruvian Association of Authors and Composers [Asociación Peruana de Autores y Compositores] (APDAYC); the Peruvian Union of Phonographic Producers [Unión Peruana de Productores Fonográficos] (UNIMPRO); the National Association of Performers [Asociación Nacional de Artistas Intérpretes y Ejecutantes] (ANAIE); and Management Association of Audiovisuals (EGEDA-PERU), in order to verify strict compliance with the rules laid down in Legislative Decree 822 and verify that the administrative and management expenses do not exceed the maximum threshold allowed by law.

Collective Management organizations are authorized by the Department of Copyright and are under its oversight, which is performed within established legal procedures.

Between 2006 and 2011, the following administrative proceedings were initiated ex officio against management societies.



Table No 12
Ex officio cases against APDAYC

TYPE	CASE NUMBER	RESOLUTION	FINE
CLAIM	000461-2005/ODA	0274-2007/ODA-INDECOPI	15 UIT
CLAIM	001599-2010/DDA	0697-2010/CDA-INDECOPI	5 UIT
CLAIM	001601-2010/DDA	0683-2010/CDA-INDECOPI	20 UIT
CLAIM	002191-2010/DDA	0181-2011/CDA-INDECOPI	2.5 UIT
CLAIM	000250-2011/DDA	PENDING	PENDING

Table No 13
Ex officio cases against UNIMPRO

TYPE	CASE NUMBER	RESOLUTION	FINE
CLAIM	002202-2009/DDA	0722-2010/CDA-INDECOPI	S/M

Table No 14
Ex officio cases against UNIMPRO

TYPE	CASE NUMBER	RESOLUTION	FINE
CLAIM	000915-2007/ODA	0431-2009/CDA-INDECOPI	5 UIT

Table No 15
Ex officio cases against EGEDA

TYPE	CASE NUMBER	RESOLUTION	FINE
CLAIM	002235-2010/DDA	PENDING	PENDING

c. Goods Seized at Border Worth 40 million Nuevos Soles

The interventions carried out by an inspector hired to intervene shipments in the customs terminals in order to confirm, during clearance process, whether or not shipments contain any counterfeit or smuggled goods, is yielding good results. These interventions contribute

to prevent future infringements to copyrights. In the period from August 2006 to December 2011, the work of inspectors in different customs storage terminals, both in Callao and in Ventanilla, has allowed to inspect and seize goods that infringe intellectual property rights. As a result of the inspections in the Primary Custom Zone, 275 administrative proceedings have been filed. 151 inspector's reports have been generated and 242 warnings have been issued. As a result of such Reports and Warnings, goods for a total of S/. 39,223,039 have been seized through the corresponding administrative proceedings for violation of import duties⁶³.

d. Reducing Software Piracy in Peru

We would like to highlight the significant reduction in software piracy levels in Peru; presently, piracy stands at 68%.

According to the Eighth Annual Global Software Piracy Study, Peru's national piracy rate dropped to 68% in 2010.

This reduction was achieved through the inspections carried out by Indecopi and the information campaigns implemented in this sector.

e. Campaign with the Business Software Alliance (BSA) aimed at 25,000 companies

This campaign aims at taking an inventory of computer programs in use and offering advice on regularization processes resulting from such campaign.

f. Oversight Campaigns on the Legal Use of Software in Provinces

With the participation, coordination, and support of the Regional Offices of Piura, Chiclayo, and Trujillo, we have sent out letters to 400 companies operating in these provinces, informing them of the legal framework on the protection of software with a clear message inviting them to take advantage of the regularization campaign.

g. Oversight Campaigns on the Legal Use of Software for Retailers

The purpose of these campaigns has been to reach out to public establishments engaged in the sale of computer supplies and computer equipment, among others.

63 Reports by Customs Inspector, Guillermo DÍAZ NOBLECILLA.



The aim of the campaign was to prevent those selling computer equipment from misleading buyers and instead suggesting that they purchase legal *software*.

h. Oversight Campaigns on the Legal Use of Software to Computer Equipment Assemblers

These campaigns have aimed at informing computer assemblers, reminding them about the scope of the legal framework on software protection in Peru and to get them to eliminate bad practice to installing *software* on computers illegally.

i. Oversight Campaigns on Legal Software focusing on SMEs

In 2012, the Department of Copyright has conducted campaigns addressed to nearly 7,000 small and medium sized companies, asking them about the *software* they use. To this end, we have made available to target companies an online platform for them to enter the required information on a software inventory survey.

j. Oversight of Programs Broadcasted and Civil Works by TV. Cable Companies

The Department of Copyright has audited the programs broadcasted by 40 cable TV companies to confirm whether or not they count with the broadcasting rights or permits.

In compliance with the Law on Copyright and Related Rights, the Department of Copyright has disseminated its oversight role in this area, reminding economic agents of the need to comply with the law and to respect of intellectual property in order to improve Peru's competitiveness, thus allowing even more consumers to have access to quality services for better entertainment. Moreover, the Department has imposed fines for a total of roughly one million dollars.

k. Single Window

Without prejudice to the oversight role of collective management societies on Copyright and Related Rights , during the Tenth Regional Meeting of the International Federation of the Phonographic Industry (IFPI) held in Lima, an initiative of the Department of Copyright, the International Federation of the Phonographic Industry , the International Confederation of Societies of Authors and Composers (CISAC), and the Ibero-Latin-American Federation of Performers (FILAIIE) agreed on a common agenda in order to implement a single window

so as to facilitate the collection, promotion, and professionalization of its members; the active dissemination of a culture of respect to copyright; and the combat to infringements to intellectual property rights. It should be noted that these actions are carried out in coordination with the Indecopi Department of Copyright, which also actively participated in this international meeting.

3.9. Outreach and Training Programs Given by Officials of the Department of Copyright

Between 2006 and 2011, the Department of Copyright has organized various training and education activities for judges and prosecutors, members of the National Police, Criminal Judges Specialized in Customs Offenses and Intellectual Property Crime, Justices of the Criminal Chamber, officials of the Tax Administration (SUNAT), members of Security of various Municipalities, university professors from different universities nationwide, college students, school students, technical schools students, for a total of approximately 180 training sessions.

3.10. Contribution to the Administration of Justice

In Table No. 16 below, we can see various proceedings filed with the Department of Copyright between 2006 and 2011, worth highlighting is the more than 4,000 complaints, inspections, injunctions, and arbitration and mediation proceedings.

Table No. 16
Summary of Cases (2006 to 2011))

	Type of Procedure						
	Registrations	Claims	Inspections	Injunctions	Arbitration	Mediations	Total
Solicitudes	7 409	1 681	1 934	396	4	12	11 436
Concluidos	7 307	1 619	1 869	390	3	13	11 201

a. Fines imposed by both the Office and the Commission on Copyright between 2006 and 2011

Between 2006 and 2011, the Department of Copyright, as a dispute settlement body, has imposed fines in the different disciplinary proceedings, for an amount of S/.5.942.64764⁶⁴.

b. b. Promoting the development of emerging cultural industries.

In the period between 2006 and 2011, the Directorate of Copyright has encouraged the establishment of copyright roundtables to discuss about emerging cultural industries, such as those of playwrights, songwriters, theater producers, video animation specialists, creators of video games, independent publishers, among others, so that they can learn about their rights and the existing protection mechanisms.

64 SSE System.

CONCLUSIONS

1. The Department of Directorate Signs (DDS) is the competent national authority for distinctive signs responsible for administering the system of rights concerning trademarks of products or services, trade names, slogans, collective marks, certification marks, appellations of origin, and any other sign determined by law.
2. The *raison d'être* of the patent system and, in general, of intellectual property rights, is to be an engine and incentive driving innovation and technical progress through the legal protection of expressions of creativity, within a free competition system which, in principle, should not contain privileges or restrictions.
3. The Department of Inventions and New Technologies is the competent body to record amendatory acts relating to registered rights, such as transfers, change of name, change of address, licenses, and so on. The Department is also responsible for the list of use licenses for technology, technical assistance, basic and detailed engineering, management and franchising of foreign origin.
4. International trade in products protected by Copyright is booming worldwide and both developed and developing countries have recognized that in order to participate in the benefits of this trade, it is necessary to jointly protect intellectual property rights. Many international trade instruments, such as the TRIPS Agreements, show the importance currently attributed to the protection of intellectual property and particularly to copyright as contributing factors to the international flow of goods and services.
5. The Indecopi Department of Copyright is the competent authority responsible for oversight and actions against activities that infringe the rules on Copyright and Related Rights.
6. In its fight against piracy, the Copyright Department has been devising various strategies and operational plans to counter this crime. Thus, this area, along with the National Tax Administration (SUNAT), the National Police, the Ministry of Defense, and the Ministry of Interior, among others, is a member of the Central Command for Combating Customs Offenses and Piracy. In turn, this inter-agency group is part of the National Commission mentioned above. It is charged with coordinating joint actions and the adoption and implementation of mega operations in reproduction and/or distribution centers of pirated products.

ANNEXES



Exhibit No. 1

SILDENAFIL CASE

By Resolution 00050-1999/OIN-INDECOPI dated 29 January, 1999, Indecopi granted the patent application entitled "PYRAZOLOPYRIMIDINONES FOR THE TREATMENT OF IMPOTENCE" in favor of PFIZER RESEARCH AND DEVELOPMENT COMPANY N.V./ S.A., for a term of twenty years, until 26 May, 2014 (Application No. 243190-1994/OIN); the purpose of this patent was to protect the second use of Sildenafil, already known to treat pulmonary arterial hypertension, where the new use was to treat erectile dysfunction.

The Secretariat of the Andean Community, in the case filed by the Association of National Capital and Peruvian Pharmaceutical Industries [Asociación de Industrias Farmacéuticas de Origen y Capital Nacional del Perú] (ADIFAN) issued Resolution 358, which decided that the Government of Peru had failed to comply with its obligation by having issued Supreme Decree 010-07-ITINCI, whose legal framework allows to grant a patent that did not meet the conditions of patentability under the Community Industrial Property Regime, particularly the requirement of novelty, in breach of the provisions of Article 1 and 16 of Decision 344, and was given a term of thirty calendar days to end such infringement.

Since the Peruvian government did not comply with that resolution, the General Secretariat of the Andean Community (CAN) filed with the Andean Community Court of Justice a Claim for Failing to comply with its obligations against the Republic of Peru (Case 89 -AI 2000).

As a result of this case, the Andean Community Court of Justice issued its decision dated 28 September, 2001, published in the Official Gazette 722 of 12 October, 2001, in which it adjudicated the following:

"That the Republic of Peru has breached the Charter of the Court and Decision 344 of the Cartagena Agreement Commission by having granted in favor of PFIZER the invention patent of ' pyrazolopyrimidinones for the treatment of impotence,' through the ruling issued on 29 January, 1999."



It should be noted that the second use patent called "PYRAZOLOPYRIMIDINONES FOR THE TREATMENT OF IMPOTENCE," registered in favor of PFIZER RESERACH AND DEVELOPMENT COMPANY N.V./S.A., by virtue of Resolution 000955-2002/OIN-INDECOPI issued on 27 August, 2002, was declared VOID for not meeting the requirements of Decision 344, in connection with the application for revocation submitted by CORPORACION MEDCO S.A.C.; such decision was appealed by the applicant but was confirmed by Resolution 0505-2003/TPI-INDECOPI.

Exhibit 2

RESOLUTIONS (RULINGS)

Resolution : 000187-2006/ODA-INDECOPI.
Case Number: 000622-2005/ODA consolidated with case
001160-2005/ODA .
Plaintiff : Betty Maria Angela Morales Valdivia
Respondent : Clínica Internacional S.A. (clinic) Rímac Internacional
Compañía de Seguros y Reaseguros. (insurance company)
Subject : Infringement of the right of reproduction and
communication to public of performances.

Summary:

The Resolution provides that singers and/or performers have a right to exclusive exploitation, in all cases in which artist is given the power to authorize erga omnes communication to the public of his work, without any other limitations than those expressly set in the law (exceptions or limitations), regardless of whether the right is exercised individually or by any collective society. The exercise of an exclusive right means that the artist must exercise it in accordance with Art. 37 of Legislative Decree 822, i.e., granting the authorization in advance and in writing to the act of exploitation, whether such authorization is given in a separate document or in the employment agreement or the services agreement. The assignments or authorizations of the exclusive rights granted to the artist are subject to Articles 89, 90, 91, 92, 93, 94, and 95 of Legislative Decree 822 by virtue of Article 130 of such Law; where the term “work “ shall be replaced by “unspecified performances.”

The exercise of exclusive rights implies the existence of a direct legal relationship between the right holder and the user of intellectual services (assignment or license agreement).

With regard to public communication of performances, it states that the artist's, singer's, and performer's right to exploit regarding the public communication of his performances the artist, performer and performer on the public communication of their performances



only exists to the extent that it has not been lawfully recorded. Once such recording is authorized, there is simply a right to compensation, but not the exclusive right to authorize or prohibit the communication to the public of the performance; and, consequently, in recorded performances, the applicable rule is the mere compensation for public communication of performances given.

Moreover, the resolution states that the performance and/or execution of an artist shall be protected by the intellectual property laws insofar as he has performed or executed a piece of art.

In this regard, the resolution states that the personification of various characters from an advertising model for that personification to be captured by a camera or a camcorder would simply be protected by related rights insofar as the character played by the model has sufficient original features to be protected as an artistic work.

Resolution : 153-2003/ODA-INDECOPI.
Case Number: 001235-2001/ODA.
Plaintiff : INDECOPI
Respondent : Peruvian Association of Authors and Composers [Asociación Peruana de Autores y Compositores] (APDAYC). Members of the Boards in 1998, 1999, and 2000. Members of the Oversight Committee in 1998, 1999, and 2000.
General Directors in 1998, 1999, and 2000.
Materia : Infracción a la Decisión 351 y al Decreto Legislativo N° 822.

Summary:

The Resolution establishes the criteria to audit the activity of collective management societies in relation to their spending threshold, so for example, in connection with administrative expenditure, it establishes that they are required to carry out the main purpose of collecting societies such as the collection and distribution activities. Further, it indicates that the intention the legislature in setting a threshold thereto was not only to ensure the interests of holders of compensations collected by the entities, but also to establish objective parameters which enable oversight activities,

inspections, and eventually management oversight of such income by partners or by similar institutions abroad.

Thus, management entities whose expenses represent 30%, plus or minus, will not be seen as efficient entities because, by comparison, the affiliate will receive less revenue than the member of another entity whose expenditure threshold is around 20% or 15%.

The main incentive of a management entity to improve its efficiency may not be the oversight (auditing) activity of a Government agency or the penalties provided in the law, but rather to offer those members who entrusted the management of their rights, the most possible through constant improvement in this activity.

Consequently, if an entity is unable to manage earnings within a reasonable margin, it is not only failing its obligation towards those who entrusted their management, but is also challenging the reason why the collective management system was created, because to the extent that management is too burdensome for the author or the user, they considered more efficient other options, such as for example managing their rights individually or limiting their individual management only to certain forms of exploitation (little rights).

So, if there were no spending threshold in our legislation, management entities would still be responsible for managing such compensations efficiently in order not to disappear.

Resolution : 000285-2007/ODA-INDECOPI.
 Case Number: 001241-2005/O.
 Plaintiff : Enrique Gheresi Silva. Mario Ghibellini Harten
 Respondent : Hernando de Soto.
 Orbis Ventures S.A.C.
 Prensa Popular S.A.C.
 Interested
 Third Party : Instituto Libertad y Democracia (ILD).
 Subject : Infringement of Moral Rights to Claim Authorship and Integrity.



Resolution : 001590-2005/ODA.
Case Number: 001235-2001/ODA.
Plaintiff : Hernando de Soto Polar.
Interested
Third Party : Enrique Gheresi Silva.
Mario Ghibellini Harten.
Instituto Libertad y Democracia (ILD)
Subject : Request for Annulment and Cancellation of Registry
Entry 0163-1990, Section No. 1.
Date : Lima, 03 August 2007

Sumilla

In Resolution 000285-2007/ODA-Indecopi, two procedures different but interrelated cases were settled: one referring to the alleged infringement of the right to claim authorship and integrity and one referring to the request for cancellation of a Registry Entry.

In the case for alleged infringement of the right to claim authorship and integrity, the court determined whether the complainants Gheresi and Ghibellines could validly invoke the assumption of authorship of registration accuracy and, if such assumption were found applicable, who would be entitled to challenge them in order to finally determine whether the co-respondents violated the right of authorship and integrity of the play "The Other Path: the Informal Revolution" [El Otro Sendero: La Revolución Informal].

One aspect that is relevant from this Resolution is related to the act of creating the work, the event of inception giving the right to claim its authorship; hence, the assumption of the right to claim authorship is a way to ease the burden of proof of such creation in court, yet it cannot serve to divest authors of the right to claim authorship, since the act of creation is a reality that is outside the scope of the right or of any legal system –such reality cannot be ignored by any law, judge, official, or lawyer irrespective of how expert he may be.

The Resolution provides that the assumption of the right to claim authorship may only be invoked when it is possible to infer clearly and undoubtedly from reading a copy of the published work that the names, signs or transparent pseudonyms contained in that copy identify the authors and no other person who may appear in them, such as graphic designers, cover designers, and so on.

Resolution : 045-2004/ODA-INDECOPI.
Case Number: 001470-2002/ODA.
Plaintiff : NETRIAN S.A.
Respondent : Jurado Nacional de Elecciones (JNE) [National Electoral Board]
Indra Sistemas SA. Sucursal del Perú.
Subject : Infringement of Software Copyrights.

Summary

This resolution addresses the protection of software and computer programs in domestic laws. It stipulates that portions of the software or computer program are protected by Copyright.

Some of the protected areas are, for example, the source code, which was the reason why software is protected by the rules of Copyright and, therefore, it is assimilated to the category of literary works, since this is a set of instructions that could be expressed by using symbols with a given semantic content.

However the software or computer program is more than just the source code; it also consists of the object code, which is the visible form of software and the only one that users can see on their screens.

With regard to the technical documentation and user's manuals, although they are not parts of a software, they are protected in the same terms as the software by virtue of assimilation made by the domestic law.

Another important aspect of this Resolution focuses on establishing the originality criterion applicable to software or computer programs. According to the Resolution, the criterion of originality cannot be the same for all categories of works, but different criteria and/or parameters should apply. Establishing a single criterion of originality, in accordance with this Resolution, would entail stop protecting many works where the scope for expression is minimal, as is often the case with software made from other software which facilitates the work of the author.

In the digital world in which we find ourselves today, this criterion applied by the Resolution is extremely relevant since, even in the case of musical compositions, many authors have the ability to compose from libraries made available where author only has to choose from a vast array of options.



Resolution : 0170-2003/ODA-INDECOPI.
Case Number: 000661-2000/ODA.
Plaintiff : Asociación Peruana de Artistas Visuales (APSAV).
Respondent : Empresa Peruana de Servicios Editoriales S.A.
Subject : Unauthorized Reproduction and Distribution of Artistic Works.

Summary

The Resolution addresses the issue of limits on copyright in the case of reproduction of artistic works. It points out that the implementation of any limit, it is necessary to follow the “three step test,” enshrined in Article 9, paragraph 2) of the Berne Convention. This test assumes that any exception to the exclusive right granted to the author over his work must be established by a norm having the force of law; it should not cause unreasonable prejudice to the legitimate interests of the author; and its application must not conflict with a normal exploitation of the work.

With regard to the limits on the right of reproduction for information purposes, the Resolution states that the reason for this limit is the freedom of expression, citing the Guide to the Berne Convention which provides that:

“The purpose here is to satisfy the information needs of the present, but within reasonable limits. By reporting on current events, it often happens that during the development of such events literary or artistic works become visible or perceptible and whose presence is purely secondary in relation to the very purpose of the report within which they frequently appear incidentally. For example, during a military parade, a sporting event, or reception to a Head of State, songs and military music is played. The radio or television review of an event of that kind cannot avoid the use of such artistic works, even when only a few snapshots of the ceremony in question are broadcasted...”⁶⁵.

With regard to this quote, the Resolution provides that, in order to apply Article 44 of Legislative Decree 822, consistent with letter a) of Article 22 of Andean Decision 351 and the first paragraph of Article 10 of the Berne Convention, the following assumptions must occur:

65 Emphasis added by Indecopi.

1. The work cited must have been previously made available in a lawful manner.
2. The quotation must be textual or remain loyal to the artistic work cited as well as the author's thoughts.
3. It should recognize the right to claim authorship, mentioning the author's name, pseudonym or mentioning that the work was published anonymously, as well as the source.
4. The quotation must conform to fair practice; in this point, it is necessary to take into consideration that the inclusion of an existing work in another work, if necessary, shall not interfere or compete with the normal exploitation of the quoted artistic work, decreasing its sales, circulation, and so on.
5. The quotation shall be made to the extent justified to meet the purpose for which it is included; this should serve as reference for the Office to determine not only the extent of the quotation but also to assess the appropriateness of such right of quotation.

Finally, regarding the reproduction of artistic works that are permanently located in a public place or open to the public, by including under letter f) of Decision 351, the phrase "in a place open to the public," the Office should consider that this limit is not contrary to the case referred to in letter e) of Article 43 of Legislative Decree 822 referring to "streets, squares or other public places;" consequently, both limits are applicable in Peruvian domestic law, so reproduction of such artistic works located in places open to the public and in public places such as museums, galleries, streets, squares, avenues among others is allowed. However, it is not enough to implement these limits for the artistic works to be found in a public place or available to the public, both norms (Decision 351 and Legislative Decree 822) stipulate that the artistic works should be placed "permanently" in a public place or a place open to the public. This "perpetuity" requirement would preclude the possibility of using the artistic works whose placement in public places or places of public access is only sporadic or occasional. Thus, in this case, we have verified that some of the artistic works reproduced, though belonging to permanent collections of some museums at the time when they were reproduced by the respondent, they were not exhibited in such museums because, according to the allegations made by respondent, such reproductions were made in order to inform about important examples and current events so that the public concerned could attend to such events. In addition, we have been able to verify that another portion of the artistic works reproduced belong to private collections or are permanently in the authors' shops; therefore, in such cases the requirement of permanence stipulated by Decision 351 and Legislative Decree 822 is not met.

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LIST OF ACRONYMS



TRIPS (ADPIC) AGREEMENT	: Agreement on Trade-Related Aspects of Intellectual Property Rights
AGRO RURAL	: Rural Agricultural Productive Development Program [Programa de Desarrollo Productivo Agrario Rural]
ANAIE	: Society of Artists and Performers [Sociedad de Artistas, Intérpretes y Ejecutantes]
APDAYC	: Peruvian Association of Authors and Composers
APSAV	: Society of Visual Artists [Sociedad de Artistas Visuales]
IDB	: Inter-American Development Bank
BSA	: Business Software Alliance
CAD	: Ciudadanos al Día
CAN	: Andean Community of Nations
CDB	: Convention on Biological Diversity (CBD)
CECONSEC	: Center for Native Communities of the Middle Amazon [Central de Comunidades Nativas de la Selva Central]
CERLALC	: Regional Center for the Promotion of Books in Latin America and the Caribbean
CHIRAPAQ	: Center for Indigenous Cultures of Peru [Centro de Culturas Indígenas del Perú]
CONACINE	: National Cinematography Council of Peru [Consejo Nacional de Cinematografía del Perú]
CONAP	: Confederation of Amazon Nationalities of Peru [Confederación de Nacionalidades Amazónicas del Perú]
UPOV 1991	: Convention for the Protection of New Varieties of Plants
BTC	: Belgian Technical Cooperation
DIN	: Indecopi Department of Inventions and New Technologies
IPR	: Intellectual Property Rights
EGEDA PERÚ	: Management Association Audiovisual Rights [Entidad de Gestión de Derechos Audiovisuales]
ESPAENET	: European Patent Office (EPO)
R&D	: Research and Development
IFPI	: International Federation of the Phonographic Industry
IIAP	: Peruvian Amazon Research Institute [Instituto de Investigaciones de la Amazonía Peruana]

INEI	: National Institute of Statistics and Information [Instituto Nacional de Estadística e Informática]
INIA	: National Institute of Agricultural Innovation [Instituto Nacional de Innovación Agraria]
INVENES	: Spanish Patent and Trademark Office [Oficina Española de Patentes y Marcas]
JPO	: Japan Patent Office
OIN	: Invention and New Technologies Office [Oficina de Inventiones y Nuevas Tecnologías]
WTO [Spanish: OMC]	: World Trade Organization
WIPO [Spanish: OMPI]	: World Intellectual Property Organization
WHO [Spanish: OMS]	: World Health Organization
UNIDO [Spanish: ONUDI]	: United Nations Industrial Development Organization
PACIS	: Program to Support Software Industry Competitiveness [Programa de Apoyo a la Competitividad de la Industria de Software]
PCT	: Patent Cooperation Treaty
PIBA	: Amazon Biodiversity Research Program [Programa de investigación en Biodiversidad Amazónica]
SELA	: Latin American and the Caribbean Economic System
SOCIODIVERSIDAD	: Reserch Program of the Cultural Diversity and Amazon Economy
SONIEM	: National Society of Music Artists and Performers [Sociedad Nacional de Intérpretes y Ejecutantes de la Música]
SPDA	: Peruvian Society of Environmental Law [Sociedad Peruana de Derecho Ambiental]
SUNAT	: Peruvian Tax Administration [Superintendencia Nacional de Administración Tributaria]
TLT	: Trademark Law Treaty
TPP	: Trans Pacific Partnership
UNESCO	: United Nations Educational, Scientific and Cultural Organization
UNICEF	: United Nations Children's Fund
UNIMPRO	: Society of Phonograph Producers [Sociedad de Productores Fonográficos]
USPTO	: United States Patent and Trademark Office
WCT	: WIPO Copyright Treaty
WPPT	: WIPO Phonograms and Performances Treaty

