

**LAW N° 27811 (published in the Official Journal “El Peruano”
on August 10, 2002)**

**LAW INTRODUCING A PROTECTION REGIME FOR THE COLLECTIVE
KNOWLEDGE OF INDIGENOUS PEOPLES DERIVED FROM BIOLOGICAL
RESOURCES**

**TITLE I
RECOGNITION OF THE RIGHTS OF INDIGENOUS PEOPLES IN THEIR
COLLECTIVE KNOWLEDGE**

Article 1.- Recognition of rights

The Peruvian State recognizes the rights and power of indigenous peoples and communities to dispose of their collective knowledge as they see fit.

**TITLE II
DEFINITIONS**

Article 2.- Definitions

For the purposes of this legislation:

(a) **“Indigenous peoples”** means aboriginal peoples holding rights that existed prior to the formation of the Peruvian State, maintaining a culture of their own, occupying a specific territorial area and recognizing themselves as such. These include peoples in voluntary isolation or with which contact has not been made, and also rural and native communities. The term “indigenous” shall encompass, and may be used as a synonym of, “aboriginal,” “traditional,” “ethnic,” “ancestral,” “native” or other such word form.

(b) **“Collective knowledge”** means the accumulated, transgenerational knowledge evolved by indigenous peoples and communities concerning the properties, uses and characteristics of biological diversity. The intangible components referred to in Decision 391 of the Commission of the Cartagena Agreement include this type of collective knowledge.

(c) **“Prior informed consent”** means authorization given under this protection regime, by the representative organization of the indigenous peoples possessing collective knowledge and in accordance with provisions recognized by them, for the conduct of a particular activity that entails access to and use of the said collective knowledge, subject to the provision of sufficient information on the purposes, risks or implications of the said activity, including any uses that might be made of the knowledge, and where applicable on its value.

(d) **“License contract for the use of collective knowledge”** means an express agreement concluded between the organization of indigenous peoples possessing collective knowledge and a third party that incorporates terms and conditions for the use of the said collective knowledge. Such contracts may constitute an annex to the contract mentioned in Article 34 of Decision 391 of the Commission of the

Cartagena Agreement introducing the Common Regime on Access to Genetic Resources.

(e) “**Biological resources**” means genetic resources, organisms or parts thereof, populations or any other kinds of biotic component of ecosystems that are of real or potential value or use to mankind.

TITLE III SCOPE OF PROTECTION

Article 3.- Scope of protection afforded by this legislation

This legislation establishes a special protection regime for the collective knowledge of indigenous peoples that is connected with biological resources.

Article 4.- Exceptions to the regime

This regime shall not affect the traditional exchange between indigenous peoples of the collective knowledge protected under this regime.

TITLE IV OBJECTIVES

Article 5.- Objectives of the regime

The following shall be the objectives of this regime:

- (a) To promote respect for and the protection, preservation, wider application and development of the collective knowledge of indigenous peoples;
- (b) To promote the fair and equitable distribution of the benefits derived from the use of that collective knowledge;
- (c) To promote the use of the knowledge for the benefit of the indigenous peoples and mankind in general;
- (d) To ensure that the use of the knowledge takes place with the prior informed consent of the indigenous peoples;
- (e) To promote the strengthening and development of the potential of the indigenous peoples and of the machinery traditionally used by them to share and distribute collectively generated benefits under the terms of this regime;
- (f) To avoid situations where patents are granted for inventions made or developed on the basis of collective knowledge of the indigenous peoples of Peru without any account being taken of that knowledge as prior art in the examination of the novelty and inventiveness of the said inventions.

TITLE V
GENERAL PRINCIPLES

Article 6.- Conditions of access to collective knowledge

Those interested in having access to collective knowledge for the purposes of scientific, commercial and industrial application shall apply for the prior informed consent of the representative organizations of the indigenous peoples possessing collective knowledge. The organization of the indigenous peoples whose prior informed consent has been applied for shall inform the greatest possible number of indigenous peoples possessing the knowledge that it is engaging in negotiations and shall take due account of their interests and concerns, in particular those connected with their spiritual values or religious beliefs. The information supplied shall be confined to the biological resource to which the collective knowledge under negotiation relates in order to safeguard the other party's interest in keeping the details of the negotiation secret.

Article 7.- Access for the purposes of commercial or industrial application

In the event of access for the purposes of commercial or industrial application, a license agreement shall be signed in which terms are provided that ensure due reward for the said access and in which the equitable distribution of the benefits deriving therefrom is guaranteed.

Article 8.- Percentage accruing to the Fund for the Development of Indigenous Peoples

A percentage which shall not be less than ten per cent of the value, before tax, of the gross sales resulting from the marketing of goods developed on the basis of collective knowledge shall be set aside for the Fund of the Development of Indigenous Peoples provided for in Articles 37 *et seq.* The parties may agree on a greater percentage according to the degree of direct use or incorporation of the said knowledge in the resulting end product and the degree to which the said knowledge contributed to the reduction of the cost of research and development work on derived products, among other things.

Article 9.- Role of present generations

The present generations of the indigenous peoples shall preserve, develop and administer their collective knowledge for the benefit of future generations as well as for their own benefit.

Article 10.- Collective nature of the knowledge

The protective knowledge protected under this regime shall be that which belongs to an indigenous people and not to particular individuals forming part of that people. It may belong to two or more indigenous peoples. The rights shall be independent of

those that may come into being within the indigenous peoples, which may have recourse to their traditional systems for the purposes of the distribution of benefits.

Article 11.- Collective knowledge and cultural heritage

Collective knowledge forms part of the cultural heritage of indigenous peoples.

Article 12.- Inalienability and indefeasibility of rights

Because they form part of the cultural heritage, the rights of indigenous peoples in their collective knowledge shall be inalienable and indefeasible.

Article 13.- Collective knowledge in the public domain

For the purposes of this regime, it shall be understood that collective knowledge is in the public domain when it has been made accessible to persons other than the indigenous peoples by mass communication media such as publication or, when the properties, uses or characteristics of a biological resource are concerned, where it has become extensively known outside the confines of the indigenous peoples and communities. In cases where the collective knowledge has passed into the public domain within the previous 20 years, a percentage of the value, before tax, of the gross sales resulting from the marketing of the goods developed on the basis of that knowledge shall be set aside for the Fund for the Development of Indigenous Peoples provided for in Articles 37 *et seq.*

Article 14.- Representatives of indigenous peoples

For the purposes of this regime, indigenous peoples shall be represented by their representative organizations, due regard being had to the traditional forms of organization of the indigenous peoples.

TITLE VI
REGISTERS OF THE COLLECTIVE KNOWLEDGE
OF INDIGENOUS PEOPLES

Article 15.- Registers of the collective knowledge of indigenous peoples

The collective knowledge of indigenous peoples may be entered in three types of register:

- (a) Public National Register of Collective Knowledge of Indigenous Peoples;
- (b) Confidential National Register of Collective Knowledge of Indigenous Peoples;
- (c) Local Registers of Collective Knowledge of Indigenous Peoples.

The Public National Register of Collective Knowledge of Indigenous Peoples and the Confidential National Register of Collective Knowledge of Indigenous Peoples shall be under the responsibility of INDECOPI.

Article 16.- Purpose of the Registers of Collective Knowledge

The purposes of the Registers of Collective Knowledge of Indigenous Peoples shall be the following, as the case may be:

- (a) to preserve and safeguard the collective knowledge of indigenous peoples and their rights therein;
- (b) to provide INDECOPI with such information as enables it to defend the interests of indigenous peoples where their collective knowledge is concerned.

Article 17.- Character of the Public National Register of Collective Knowledge of Indigenous Peoples

The Public National Register of Collective Knowledge of Indigenous Peoples shall contain such collective knowledge as is in the public domain. INDECOPI shall register the collective knowledge that is in the public domain in the Public National Register of Collective Knowledge of Indigenous Peoples.

Article 18.- Character of the Confidential National Register of Collective Knowledge of Indigenous Peoples

The Confidential National Register of Collective Knowledge of Indigenous Peoples may not be consulted by third parties.

Article 19.- Registration at the request of indigenous peoples

Any people may, through its representative organization, apply to INDECOPI for the registration of collective knowledge possessed by it in the Public National Register or in the Confidential National Register.

Article 20.- Applications for the registration of collective knowledge

Applications for the registration of collective knowledge of indigenous peoples shall be filed with INDECOPI through the representative organizations of the said peoples, and shall contain the following:

- (a) Identity of the indigenous people applying for registration of its knowledge;
- (b) Identity of the representative;
- (c) Designation of the biological resource to which the collective knowledge relates, it being possible to use the indigenous name;
- (d) A mention of the use or uses that are made of the biological resource concerned;
- (e) A clear and full description of the collective knowledge to be registered;

(f) The instrument embodying the agreement of the indigenous people to the registration of the knowledge.

The application shall be accompanied by a sample or specimen of the biological resource to which the collective knowledge to be registered relates. In cases where the sample or specimen is difficult to transport or manipulate, the indigenous people applying for registration may request INDECOPI to exempt it from the submission of the said sample or specimen and to allow it to file instead photographs that allow the characteristics of the biological resource to which the collective knowledge relates to be ascertained. The said sample or specimen, or as the case may be the said photographs, shall enable INDECOPI to identify unmistakably the biological resource concerned and to enter the scientific name thereof in the file.

Article 21.- Processing of the application

INDECOPI shall satisfy itself, within a period of ten days after the filing of the application, that the said application contains all the data specified in the foregoing Article. Where anything has been omitted, the indigenous people applying for registration shall be served notice to complete the application within a period of six months, which period may be renewed at its request, with a warning that otherwise the application shall be declared abandoned. Once INDECOPI has satisfied itself that the application contains all the data specified in the foregoing Article, it shall proceed to register the collective knowledge in question.

Article 22.- Sending of representatives of INDECOPI

In order to make the registration of collective knowledge of indigenous peoples easier, INDECOPI may send duly accredited representatives to the various indigenous peoples for the purpose of gathering the information necessary for the prosecution of such applications for registration as they may wish to file.

Article 23.- Obligation on INDECOPI to send the information contained in the Public National Register to the main patent offices of the world

With a view to its opposing pending patent applications, disputing granted patents or otherwise intervening in the grant of patents for goods or processes produced or developed on the basis of collective knowledge, INDECOPI shall send the information entered in the Public National Register to the main patent offices of the world in order that it may be treated as prior art in the examination of the novelty and inventiveness of patent applications.

Article 24.- Local registers of collective knowledge of indigenous peoples

Indigenous peoples may organize local registers of collective knowledge in accordance with their practices and customs. INDECOPI shall lend technical assistance in the organization of such registers at the request of the indigenous peoples.

TITLE VII
LICENSING

Article 25.- Compulsory registration of license contracts

License contracts shall be entered in a register kept for the purpose by INDECOPI.

Article 26.- Compulsory written form for license contracts

The representative organization of indigenous peoples in possession of collective knowledge may license third parties to use the said collective knowledge only by written contract, in the native language and in Spanish, for a renewable period of not less than one year or more than three years.

Article 27.- Contents of the license contract

For the purposes of this regime, contracts shall contain at least the following clauses:

- (a) Identification of the parties;
- (b) A description of the collective knowledge to which the contract relates;
- (c) A statement of the compensation that the indigenous peoples receive for the use of their collective knowledge; such compensation shall include an initial monetary or other equivalent payment for its sustainable development, and a percentage of not less than five per cent of the value, before tax, of the gross sales resulting from the marketing of the goods developed directly and indirectly on the basis of the said collective knowledge, as the case may be;
- (d) The provision of sufficient information on the purposes, risks and implications of the said activity, including any uses of the collective knowledge and its value where applicable;
- (e) The obligation on the licensee to inform the licensor periodically, in general terms, of progress in the research on and industrialization and marketing of the goods developed from the collective knowledge to which the license relates;
- (f) The obligation on the licensee to contribute to the improvement of the ability of the indigenous peoples to make use of the collective knowledge relating to its biological resources.

Where the contract embodies a safeguard obligation, it shall expressly so state.

INDECOPI shall not register contracts that do not conform to the provisions of this Article.

Article 28.- Applications for registration of license contracts. Confidentiality of the contract

Applications for the registration of a license contract filed with INDECOPI shall enclose the following:

- (a) Identity of the indigenous peoples party to the contract and their representatives;
- (b) Identity of the other parties to the contract and their representatives;
- (c) A copy of the contract;
- (d) The instrument evidencing agreement to enter into a license contract on the part of the indigenous peoples party to the contract.

The contract may not be consulted by third parties except with the express permission of both parties.

Article 29.- Processing of the application

INDECOPI shall satisfy itself within ten days of the filing of the application that it contains all the data specified in the foregoing Article. If anything has been omitted it shall serve notice on the party who applied for the registration to complete the application within a period of six months, which period may be renewed at his request, with the warning that otherwise the application shall be declared abandoned.

Article 30.- Verification of the contents of the contract

With a view to the registration of a license INDECOPI shall, within 30 days of the filing of the application, satisfy itself that the clauses mentioned in Article 27 have been included.

Article 31.- Additional information on environmental impact

INDECOPI shall request additional information, either at the request of a party or *ex officio*, in cases where it considers that there is risk of the balance of the environment being affected in the territories inhabited by the indigenous peoples as a result of the contract filed for registration. Registration of the contract shall be refused if such a risk is detected and where the parties fail to undertake to do what is necessary to avoid it to the extent required by the national authority responsible for environmental concerns.

Article 32.- Scope of licenses for use

The licensing of the use of the collective knowledge of an indigenous people shall not prevent others from using or licensing the same knowledge, nor shall it affect the right of present and future generations to continue to use and develop collective knowledge.

Article 33.- Prohibition of sublicensing

Sublicensing shall be allowed only with the express permission of the representative organization of the indigenous peoples that granted the license.

TITLE VIII
CANCELLATION OF REGISTRATION

Article 34.- Causes of cancellation

INDECOPI may, either *ex officio* or at the request of a party, cancel a registration of collective knowledge or a license, after the parties concerned have been heard, where:

- (a) the registration or license has been granted in violation of any of the provisions of this regime;
- (b) it is shown that the essential data contained in the application are false or inaccurate.

Cancellation actions arising out of this Article may be initiated at any time.

Article 35.- Request for cancellation

The request for cancellation of a registration shall record or enclose, as the case may be, the following:

- (a) Identity of the party requesting cancellation;
- (b) Identity of the representative or agent, if any;
- (c) Registration affected by the cancellation;
- (d) A statement of the legal grounds for the action;
- (e) Evidence substantiating the grounds for cancellation invoked;
- (f) Address at which notice was served on the owner of the registration whose cancellation is requested;
- (g) Where appropriate, copies of whatever powers of attorney are necessary;
- (h) Copies of the application and its enclosures for the owner of the registration.

Article 36.- Processing of the request

The request for cancellation shall be notified to the owner of the registration, who shall be allowed a period of 30 days to make his rebuttal. After that period, INDECOPI shall settle the issue with or without the relevant rebuttal.

TITLE IX
FUND FOR THE DEVELOPMENT OF INDIGENOUS PEOPLES

Article 37.- Purpose of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples and Communities is hereby created for the purpose of contributing to the comprehensive development of indigenous peoples through the financing of projects and other activities. The Fund shall enjoy technical, economic, administrative and financial autonomy.

Article 38.- Access to the resources for the Fund for the Development of Indigenous Peoples and Communities

Indigenous peoples have the right to draw on the resources of the Fund for the Development of Indigenous Peoples through their representative organizations for the purpose of development projects, subject to prior evaluation and approval by the Administrative Committee.

Article 39.- Administration of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples shall be administered by five members of representative organizations of indigenous peoples and two members of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, who shall constitute the Administrative Committee. The Committee shall to the extent possible use the machinery traditionally used — by indigenous peoples — for allocating and distributing collectively-generated benefits. The Administrative Committee shall give the representative organizations of indigenous peoples quarterly information on funds received.

Article 40.- Obligation on members of the Administrative Committee to submit sworn statements

The members of the Administrative Committee shall, on taking up their duties and annually thereafter, submit a sworn statement of assets and income to the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples.

Article 41.- Resources of the Fund for the Development of Indigenous Peoples

The resources of the Fund for the Development of Indigenous Peoples shall be derived from the State budget, international technical cooperation, donations, the percentage of economic benefits referred to in Articles 8 and 13, the fines referred to in Article 62 and other sources.

TITLE X
PROTECTION CONFERRED BY THIS REGIME

Article 42.- Rights of indigenous peoples possessing collective knowledge

Indigenous peoples possessing collective knowledge shall be protected against the disclosure, acquisition or use of that collective knowledge without their consent and in an improper manner provided that the collective knowledge is not in the public domain. It shall likewise be protected against unauthorized disclosure where a third party has legitimately had access to collective knowledge covered by a safeguard clause.

Article 43.- Actions for violation of rights of indigenous peoples

Indigenous peoples possessing collective knowledge may bring infringement actions against persons who violate the rights specified in the foregoing Article. An infringement action shall also be permissible where there is an immediate danger of such violation. Infringement actions may be brought *ex officio* by order of INDECOPI.

Article 44.- Reversal of the burden of proof

Where infringement of the rights of an indigenous people possessing specific collective knowledge is alleged, the burden of proof shall be on the defendant.

Article 45.- Actions claiming ownership and indemnification

The representative organizations of indigenous peoples possessing collective knowledge may bring the actions claiming ownership and indemnification that are available to them under the laws in force against a third party who, in a manner contrary to the provisions of this regime, has directly or indirectly made use of the said collective knowledge.

Article 46.- Settlement of disputes between indigenous peoples

In order to settle such disputes as may arise between indigenous peoples in connection with the implementation of this regime, including those concerning the compliance, on the part of the indigenous people that has negotiated a license contract for the use of its collective knowledge, with the provisions of the second paragraph of Article 6 of this Law, they may have recourse to the law of equity and to their traditional forms of dispute settlement, it being possible to apply to a higher-ranking indigenous organization for mediation.

TITLE XI
INFRINGEMENT ACTIONS

Article 47.- Contents of the complaint

Indigenous peoples wishing to bring an infringement action shall submit an application, through their representative organization, to the Office of Inventions and New Technology, which shall contain:

- (a) the identity of the representative organization of the indigenous peoples bringing the action, and that of their representatives;
- (b) the identity and address of the party committing the infringement;
- (c) a mention of the registration number assigned to the rights of the complainant or, failing that, a description of the collective knowledge and a mention of the biological resource to which the collective knowledge at issue relates;
- (d) an account of the facts constituting the infringement, with a mention of the place and of the means actually or presumably used, and any other relevant information;
- (e) a submission or offer of proof;
- (f) an express mention of the provisional measure applied for.

Article 48.- Processing of the complaint

Once the complaint has been accepted for processing, it shall be conveyed to the defendant so that the latter may submit his rebuttal. The period for the filing of the rebuttal shall be five years following notification, on the expiry of which the administrative authority of INDECOPI shall declare the defendant who has failed to file it to be in contempt. In the case of *ex officio* procedures, the period for the filing of rebuttals shall start on the date on which the administrative authority notifies the defendant of the circumstances being investigated, and also the nature and description of the alleged infringement. The administrative authority of INDECOPI may make such inspections and investigations as it considers necessary before sending the said notification. The complaint may be notified at the same time as an inspection is made, either at the request of the plaintiff or *ex officio*, where the administrative authority of INDECOPI considers such a step judicious.

Article 49.- Provisional measures

At any stage in the proceedings, either *ex officio* or at the request of a party, the administrative authority of INDECOPI may, within the limits of its relevant competence, order one or more of the following provisional measures in order to ensure compliance with the final ruling:

- (a) Cessation of the acts that gave rise to the action;
- (b) The seizure, confiscation or immobilization of the goods produced using the collective knowledge to which the action relates;
- (c) The adoption of the measures necessary to ensure that the customs authorities prevent the entry into the country and the departure from it of goods produced using the collective knowledge to which the action relates;
- (d) The temporary closure of the defendant's premises;
- (e) Any other measure whose purpose is to avoid the occurrence of any prejudice deriving from the act to which the action relates, or to bring about the cessation of that act.

The administrative authority of INDECOPI may, if it sees fit, order a provisional measure different from that requested by the interested party. The party against whom a provisional measure is ordered may file a request with INDECOPI to have it modified or lifted where new evidence comes to light that justifies such a step.

Article 50.- Failure to comply with a provisional measure

Where the party required to comply with a provisional measure ordered by the administrative authority of INDECOPI fails to do so, he shall be automatically subjected to a sanction not exceeding the maximum of the permitted fine, for the gradation of which due regard shall be had to the criteria used by the administrative authority of INDECOPI for handing down final rulings. That fine shall be paid within a period of five days of notification, on the expiry of which enforced collection shall be ordered. Where the party under obligation persists in failing to comply, he shall be subjected to further fines successively doubling, without limitation, the amount of the previous fine imposed until the provisional measure ordered is complied with, and without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter ordering the appropriate criminal proceedings. The fines imposed shall not prevent the administrative authority of INDECOPI from imposing a different fine or other sanction at the end of the proceedings.

Article 51.- Conciliation

At any stage in the proceedings, until such time as the complaint is entertained, the competent administrative authority of INDECOPI may summon the parties to a conciliation hearing. If both parties arrive at an agreement on the complaint, an instrument shall be drawn up recording the agreement concerned, which will have the effect of an out-of-court settlement. The administrative authority of INDECOPI may in any event continue with the proceedings *ex officio* if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 52.- Alternative dispute settlement machinery

At any stage in the proceedings, until such time as the complaint is entertained, the parties may submit to arbitration, mediation or conciliation or mixed dispute settlement arrangements conducted by third parties. Where the parties decide to submit to arbitration, they may immediately sign the appropriate arbitration convention in accordance with the rules that the governing body of INDECOPI shall have approved for the purpose. The administrative authority of INDECOPI may in any event continue with the proceedings *ex officio* if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 53.- Evidence

The parties may submit the following forms of evidence:

- (a) Expert opinion;
- (b) Documents, including all kinds of written or printed matter, photocopies, plans, tables, drawings, x-rays, cinema film and other audio and video

reproductions, computer-based communications in general and other subject matter and property that encompasses, contains or represents any fact or human activity or the result thereof;

(c) Inspection.

Evidence different from that mentioned may be submitted as an exceptional measure, but only if, in the judgment of the competent administrative authority, it is of particular importance to the settlement of the case.

Article 54.- Inspection

In the event of an inspection being necessary, it shall be conducted by the competent administrative authority of INDECOPI. Whenever an inspection is conducted, a record shall be taken which shall be signed by the party in charge of it and also by the interested parties or those representing them, or by the appointed representative of the establishment concerned. Where the defendant, his representative or the appointed representative of the establishment refuses to sign, that fact shall be recorded.

Article 55.- Assistance of the National Police

The administrative authority of INDECOPI may, both for the administration of evidence and for the making of representations, request the intervention of the National Police, without prior notification being necessary, in order to ensure that it is able to carry out its functions.

Article 56.- Administration of evidence. Insufficiency of evidence

Where, on inspection of the information submitted, the administrative authority of INDECOPI considers it necessary to procure stronger evidence, it shall serve notice on the parties to respond to the comments made within the period that the said authority shall specify, or shall administer *ex officio* such evidence as it considers necessary. The parties shall respond to the comments in writing, and shall submit such supporting evidence as they consider appropriate.

Article 57.- Oral report

The administrative authority of INDECOPI shall notify the parties that the case is ready for settlement. The parties may request the conduct of an oral proceeding before the said authority within five days. The acceptance or refusal of the said request shall be at the discretion of the administrative authority of INDECOPI, depending on the importance and implications of the case.

Article 58.- Calculation basis for fines

The amounts of the fines imposed by the administrative authority of INDECOPI shall be calculated on the basis of the tax unit (UIT) applicable on the day of voluntary payment, or on the date on which enforced collection takes place.

Article 59.- Reduction of the fine

The fine applicable shall be reduced by 25 per cent where the infringer pays the amount thereof prior to the expiry of the period for appealing against the ruling that concluded the proceedings, provided that no appeal against the ruling has been filed.

Article 60.- Expenses for administration of evidence

The cost of experts' reports, the administration of evidence and inspections, and other costs arising from the conduct of the proceedings shall be initially borne by INDECOPI. In all cases the final rulings shall determine whether the costs should be borne by one or other of the parties and refunded to INDECOPI in addition to the payment of any fine that may have been imposed.

Article 61.- Register of sanctions

INDECOPI shall keep a register of sanctions imposed for the information of the public and also in order to detect instances of recidivism.

Article 62.- Sanctions

Violations of the rights of indigenous peoples possessing collective knowledge shall give rise to the imposition of a fine, without prejudice to such measures as may be ordered to cause the infringing acts to cease or to prevent them from being committed. The fines that may be imposed shall be up to 150 tax units. The imposition and gradation of fines shall be determined according to the economic benefit secured by the infringer, the economic prejudice caused the indigenous peoples and communities and the conduct of the infringer throughout the proceedings. Recidivism shall be considered an aggravating circumstance, and the sanction applicable shall therefore not be less severe than the previous one. Where the defendant fails to comply within a period of three days with the terms of the ruling that concludes a proceeding, he shall be subjected to a sanction not exceeding the maximum of the fine allowed, according the criteria referred to in the foregoing Article, and enforced collection shall be ordered. Where the defendant persists in failing to comply, the fine imposed may be successively doubled without limitation until such time as compliance occurs without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter initiating the appropriate criminal proceedings.

TITLE XII
COMPETENT NATIONAL AUTHORITY AND INDIGENOUS KNOWLEDGE
PROTECTION BOARD

Article 63.- Competent National Authority

The Office of Inventions and New Technology of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall be competent to hear and settle in the first instance all matters concerning the protection of the collective knowledge of indigenous peoples. The Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI shall hear and settle all appeals in the second and last administrative instance.

Article 64.- Functions of the Office of Inventions and New Technology

The following shall be the functions of the Office of Inventions and New Technology of INDECOPI:

- (a) To maintain the Register of Collective Knowledge of Indigenous Peoples and keep it up to date;
- (b) To maintain the Register of Licenses for the Use of Collective Knowledge and keep it up to date;
- (c) To assess the validity of contracts for the licensing of collective knowledge of indigenous peoples, taking due account of the opinion of the Indigenous Knowledge Protection Board;
- (d) To perform such other functions as may be entrusted to it under these provisions.

Article 65.- Indigenous Knowledge Protection Board

The Indigenous Knowledge Protection Board shall be composed of five persons specialized in the subject, three of them designated by the representative organizations of indigenous peoples and two designated by the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, whose membership of the Board shall be honorary in character.

Article 66.- Functions of the Indigenous Knowledge Protection Board

The following shall be the functions of the Indigenous Knowledge Protection Board:

- (a) To monitor and oversee the implementation of this protection regime;
- (b) To support the Administrative Committee of the Fund for the Development of Indigenous Peoples and the Office of Inventions and New Technology of

INDECOPI in the performance of their functions;

(c) To give its opinion on the validity of contracts for the licensing of the collective knowledge of indigenous peoples;

(d) To give advice and assistance to the representatives of indigenous peoples who so request regarding matters connected with this regime, and in particular in the planning and implementation of projects within the framework thereof;

(e) To supervise the Administrative Committee of the Fund for the Development of Indigenous Peoples in the exercise of its functions.

To that end it may demand of the Administrative Committee any kind of information relating to the Fund's administration, order inspections or audits, examine its books and documents and appoint a representative who shall attend its meetings with the right to speak but not to vote. The decision ordering the conduct of an audit shall be accompanied by a statement of reasons. It shall be empowered to impose sanctions on them, including warnings, temporary suspension from the exercise of their functions or final dismissal from their positions, where they infringe the provisions of this regime or regulations under it, or where they are implicated in cases that affect the interests of indigenous peoples and communities, without prejudice to any criminal sanctions or civil actions that may be appropriate.

TITLE XIII ADMINISTRATIVE APPEALS

Article 67.- Request for review

A request for the review of decisions handed down by the Office of Inventions and New Technology may be filed within 15 days following the notification thereof, and shall be accompanied by new evidence.

Article 68.- Appeal

An appeal, which shall be solely against a decision concluding proceedings that is handed down by the Office of Inventions and New Technology, may be lodged within 15 days following notification of the said decision. An appeal may not be lodged against first-instance rulings that impose provisional or precautionary measures.

Article 69.- Substantiation of appeals

Appeals shall be lodged when the challenge relies on a different interpretation of the evidence produced, or where purely legal questions are involved, the latter having to be substantiated before the Office of Inventions and New Technology. On verification of the requirements laid down in this Article and in the Single Text on Administrative Procedure (TUPA) of INDECOPI, the Office shall allow the appeal and raise the case to the second administrative level.

TITLE XIV
PROCEDURE BEFORE THE TRIBUNAL

Article 70.- Second-instance procedure

When the file on the case has been received by the Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI, the appeal shall be conveyed to the other party, who shall be required to submit his rebuttal within a period of 15 days.

Article 71.- Evidence and oral report

No evidence shall be allowed other than documents. Nevertheless, any of the parties may ask to speak, and shall be required to specify whether matters of fact or of law will be raised. The grant or refusal of the request shall be at the discretion of the Chamber of the Tribunal. Where the parties are summoned to an oral proceeding, it shall be conducted in the presence of those who attend it.

COMPLEMENTARY PROVISIONS

FIRST.- Independence of current intellectual property legislation. This special protection regime is independent of that provided for in Decisions 345 of the Commission of the Cartagena Agreement and 486 of the Commission of the Andean Community, in Legislative Decrees Nos. 822 and 823 and in Supreme Decree No. 008-96-ITINCI.

SECOND.- Submission of the license contract as a requirement for obtaining a patent. Where a patent is applied for in respect of goods or processes produced or developed on the basis of collective knowledge, the applicant shall be obliged to submit a copy of the license contract as a prior requirement for the grant of the rights concerned, except where the collective knowledge concerned is in the public domain. Failure to comply with this obligation shall be a cause of refusal or invalidation, as the case may be, of the patent concerned.

TRANSITIONAL PROVISION

SOLE PROVISION.- Composition of the Administrative Committee of the Fund for the Development of Indigenous Peoples. The designation of the members of the Administrative Committee of the Fund for the Development of Indigenous Peoples shall be the responsibility of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, and shall be coordinated with the representative organizations of the indigenous peoples.

FINAL PROVISION

SOLE PROVISION.- Rules of the Fund for the Development of Indigenous Peoples. Within a period of 90 days following the entry into force of this Law, the representative organizations of indigenous peoples shall submit draft rules to the Administrative Committee of the Fund for the Development of Indigenous Peoples,

referred to in Article 39 of this Law, for approval. The said rules shall govern the organization and operation of the Fund for the Development of Indigenous Peoples, and shall determine the maximum amount or percentage of the Fund's resources that may be used to defray expenses incurred in its administration.