

**National
Telecommunications
Commission**



**JOINT NTC-IP PHILIPPINES MEMORANDUM CIRCULAR NO. 1
SERIES OF 2007**

**IMPLEMENTING RULES AND REGULATIONS ISSUED PURSUANT TO
THE MEMORANDUM OF AGREEMENT
DATED JUNE 16, 2006**

WHEREAS, the National Telecommunications Commission is the regulatory agency of the government responsible for granting of certificates of authority, permits and/or licenses to install, operate and maintain Radio/TV Broadcast and CATV services and direct broadcast satellite services throughout the Philippines;

WHEREAS, the Intellectual Property Office of the Philippines is the national agency mandated to administer and implement Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines;

WHEREAS, the Parties have agreed to provide for an administrative mechanism to effectively and expeditiously resolve cases involving cable piracy and copyright infringements;

NOW, THEREFORE, in view of the foregoing, the following implementing rules and regulations are hereby promulgated:

Rule 1 General Provisions

Section 1. Definition of Terms – Unless otherwise indicated herein, the following terms shall be understood as follows:

- (a) **Broadcast Operator** – refers to an entity engaged in the business of radio or television broadcasting.
- (b) **Bureau** – refers to the Bureau of Legal Affairs of the Intellectual Property Office of the Philippines.
- (c) **CATV Operator** – refers to an entity engaged in the business of cable television system or community antenna television.

- (d) **Complaint/Case** – refers to an administrative action brought against a broadcast, CATV or direct broadcast service operator for violation of NTC laws, rules and regulations and/or violation involving Intellectual Property Rights as defined under RA 8293 and its Implementing Rules and Regulations.
- (e) **Direct Broadcast Satellite (DBS) Service** – refers to the service that delivers TV programs to the home through a satellite receiving dish, rather than through a cable system landline wherein pictures are sent aloft, bounced off a satellite transponder and returned directly to the subscriber’s home; also known as direct-to-home/direct-to-user (DTH/DTU) broadcast system.
- (f) **Intellectual property rights (IPR)** – shall within the context and for purposes of this IRR refer to copyright and related rights.
- (g) **Intellectual property rights violations (IPV)** – refers to the unauthorized and unlawful use or exploitation of the intellectual property rights referred to in paragraph (f).
- (h) **IRR** – refers to this Implementing Rules and Regulations including future revisions and amendments thereto.
- (i) **IP Philippines** – refers to the Intellectual Property Office of the Philippines.
- (j) **NTC** – refers to the National Telecommunications Commission.

Section 2. Jurisdiction of NTC – The NTC exercises jurisdiction over all administrative cases involving violations of permits, licenses and authority to operate radio and television broadcasts including cable television system or community antenna television and direct broadcast satellite system as provided for under Act No. 3846 and Executive Orders No. 436 and 205 and its applicable rules and regulations.

Section 3. Jurisdiction of IP Philippines – The IP Philippines exercises original jurisdiction over administrative cases involving intellectual property rights violations under RA 8293 and its implementing rules and regulations.

Section 4. Special Provision – Administrative cases filed with the NTC or with the IP Philippines involving violations of NTC laws, rules and regulations *and* violations of intellectual property rights shall be governed by the provisions of this IRR. The provisions of this IRR shall not be construed as a limitation on the right of an offended party to file criminal or civil action for violation of laws involving intellectual property rights or for cases involving cable piracy and copyright infringement.

Rule 2 Administrative Complaints; Where to File

Section 1. Complaint for Violation of Intellectual Property Rights – A person may directly file with the IP Philippines a complaint against any Radio/TV broadcast operators, including CATV operators and DBS Service operators for violation of laws involving intellectual property rights.

Section 2. Complaint for Violation of NTC Rules and Regulations – A person shall directly file with the NTC a complaint against any Radio/TV broadcast operators, including CATV operators and DBS Service operators for violation of NTC laws, rules and regulations.

Section 3. Referral of Cases to IP Philippines – For complaints filed with the NTC involving violations contemplated in Section 4, Rule 1 above, NTC shall proceed to process the complaint as follows:

(a) The NTC through its Legal Department shall evaluate and determine whether a complaint filed before it alleges matters involving violation of intellectual property rights.

(b) If NTC makes such a determination, NTC shall issue an order of provisional dismissal and advise the party concerned:

(i) Of its findings citing its reason therefor, giving the party concerned the option of pursuing the IP violation either before the IP Philippines or with the regular courts;

(ii) Within fifteen (15) days from receipt of such Order, the party concerned shall manifest with the NTC where he intends to pursue his complaint for IP violation either before the courts or with the IP Philippines;

(iii) Should the party concerned manifest his intent to pursue said complaint with the IP Philippines, NTC shall immediately refer said complaint to the IP Philippines together with the entire records of the case for proper disposition in accordance with this IRR;

(c) The party exercising his option provided in (iii) above shall file his complaint with the Bureau in accordance with the Rules and Regulations on Administrative Complaints For Violation Of Laws Involving Intellectual Property Rights (Annex A hereof).

(d) Once the complaint is filed, the Bureau shall promptly notify NTC of such filing.

Section 4. Assumption of Jurisdiction by the IP Philippines– Upon filing of the administrative complaint for IP violation, the Bureau shall take cognizance of the complaint and shall proceed to expeditiously resolve the complaint in accordance with its rules and regulations.

Rule 3 Effect of IP Philippines' Orders, Resolutions or Decisions

Section 1. IP Philippines' Orders, Resolutions or Decisions– IP Philippines shall furnish NTC copies of all its interlocutory orders, final orders, resolutions or decisions of all cases referred to it pursuant to this IRR and of cases directly filed before it involving IPV referred to in this IRR as these are issued from time to time for NTC's

information and appropriate action as may be necessary or advisable in accordance with its rules and regulations governing entities subject to its supervision or jurisdiction.

Section 2. Actions that may be taken by NTC – 2.1 Upon receipt of said orders, resolutions or decisions, the NTC shall consider the findings of the IP Philippines and shall issue within ten (10) days from receipt of said orders, resolutions or decisions, as may be appropriate:

- (a) A directive to the party concerned to comply with IP Philippines' orders, resolutions or decisions.
- (b) An order requiring the party concerned to Show Cause within ten (10) days from receipt thereof why its permit, license or authority should not be suspended or cancelled.

2.2 NTC shall, in evaluating whether or not to grant or renew a permit, license or authority of any Radio/TV broadcast operator, including CATV operators and DBS Service operators, consider whether or not the applicant had been or is involved in a case pending before the IP Philippines or the courts involving IPV.

In the event that IP Philippines has issued a Cease and Desist Order in a pending case before it involving an applicant, NTC shall not issue or renew the permit, license or authority of the applicant, unless there is sufficient showing by the applicant that the Cease and Desist Order has been lifted or complied with.

Rule 4 Cooperation In Monitoring and Enforcement

Section 1. Monitoring and Enforcement – NTC shall monitor compliance by Radio/TV broadcast operators, including CATV operators and DBS Service operators of all applicable laws, rules and regulations involving intellectual property rights and shall assist IP Philippines in the enforcement of its orders, decisions, or resolutions.

Section 2. IP Philippines' Deputization of NTC – NTC may be deputized by IP Philippines to help it implement its orders, resolutions or decisions involving violations of intellectual property rights. NTC shall provide IP Philippines with relevant data, statistics and information in support of IP Philippines' projects and activities for the protection and enforcement of intellectual property rights.

Section 3. Role of LGUs and Private Sector – The assistance of Local Government Units and of the private sector may be sought in monitoring compliance and enforcement of intellectual property laws, rules and regulations.

Section 4. Continuing Cooperation – IP Philippines and NTC shall continue and strengthen their cooperation by exchanging information and conducting workshops and trainings among their officials and personnel to enhance their capability in resolving issues involving telecommunications, broadcasting, cable piracy and intellectual property.

Rule 5 Review, Amendment and Revision

Section 1. Condition for Review, Amendment and Revision - This IRR as well as the Memorandum of Agreement may be reviewed, amended and revised by mutual consent of the parties through a written notice or proposal from either party.

Rule 6 Effectivity

Section 1. Publication - This IRR shall be published in a newspaper of general circulation and shall take effect fifteen (15) days from the date of publication.

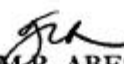
Makati City, Philippines, APR 02 2007, 2007.

**NATIONAL TELECOMMUNICATIONS
COMMISSION**

**INTELLECTUAL
PROPERTY OFFICE OF
THE PHILIPPINES**


By:

By:


ABRAHAM R. ABESAMIS
Commissioner


ADRIAN S. CRISTOBAL, JR.
Director General

Witnesses:





Rules & Regulations on Administrative Complaints for Violation of Law Involving Intellectual Property Rights

Whereas, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology, attracts foreign investments and ensures market access for our products;

Whereas, the State recognizes that the use of intellectual property bears a social function and to this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the country and to protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the Philippines;

Now, therefore, pursuant to the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, the following rules and regulations on administrative complaints for violation of laws involving intellectual property rights are hereby promulgated:

RULE 1

DEFINITIONS, INTERPRETATION; RULES OF COURT

Section 1. *Definition of Terms* – Unless otherwise indicated, the following terms shall be understood as follows:

- (a) “Answer “ means a pleading in which the adverse party sets forth the negative and affirmative defenses upon which he relies;
- (b) “Bonds” and “Counterbonds” shall refer to cash bonds and cash counterbonds in the form of cash, cashiers check or manager’s check, excluding surety bonds and surety counterbonds;
- (c) “Bureau” means the Bureau of Legal Affairs of the Intellectual Property Office;
- (d) “Chief Hearing Officer” means the officer within the Bureau who exercises immediate supervision over any Hearing Officer. His title or official designation may differ from the words “Chief Hearing Officer” depending on the structure of the Office;
- (e) “Complaint” means a concise statement of the ultimate facts constituting the complainant’s cause or causes of action. It shall specify the relief sought, but it may add a general prayer for such further or other relief as may be just and equitable;
- (f) “Court” means a court of general jurisdiction such as Regional Trial Court;
- (g) “Director General” means the head of the Intellectual Property Office;

(h) "Director" means the Director of the Bureau of Legal Affairs;

(i) "False Designation of Origin" means the act of any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which: (i) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or (ii) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of the IP Code by any person who believes that he or she is likely to be damaged by such act.

(j) "False or Fraudulent Declaration" means the act of any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or writing, or by any false means;

(k) "Hearing Officer" means the officer within the Bureau authorized to exercise the functions of "Hearing Officer" in these Regulations. The title or official designation of such officers may differ from the words "Hearing Officer" depending on the structure of the Office;

(l) "Infringement of Copyright and Related Rights" means any violation of the rights provided under Part IV of the IP Code and/or the applicable IP Law, including the act of any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of: (i) selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article; (ii) distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or (iii) trade exhibit of the article in public.

(m) "Infringement of Patent" means any violation of any of the rights of patentees and holders of utility model patents and industrial design registrations under Part II of the IP Code and/or the applicable IP Law, including the act of making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee;

(n) "Infringement of mark" means any violation of any of the rights of the registered owner under Part III of the IP Code and/or the applicable IP Law, including the act of any person who shall, without the consent of the owner of the registered mark, and regardless of whether there is actual sale of goods or services using the infringing material:

(i) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(ii) reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

(o) "Intellectual property rights" include:

- (i) Copyright and Related Rights;
- (ii) Trademarks and Service Marks;
- (iii) Geographic Indications;
- (iv) Industrial Designs;
- (v) Patents;
- (vi) Layout-Designs (Topographies) of Integrated Circuits; and
- (vii) Undisclosed Information

(p) "IP Code" means Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines;

(q) "IP Law" means any law, in addition to the IP Code, involving intellectual property rights;

(r) "Office" means the Intellectual Property Office;

(s) "Regulations" means this set of rules and regulations and such Regulations as may be formulated by the Director of Bureau of Legal Affairs and approved by the Director General.

(t) "Unfair Competition" means the act of any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result.

The following shall likewise constitute unfair competition:

(i) the act of selling one's goods and giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, or the act of clothing the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or the act of reselling the goods by any subsequent vendor with a like purpose.

(ii) the act of employing any other means, by artifice or device, calculated to induce the false belief that a person is offering the services of another who has identified such services in the mind of the public.

(iii) the act of making any false statement in the course of trade or any act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

(u) "Violation of laws involving intellectual property rights mentioned in Rule 2 Section 2" means violation of any law relating to the intellectual property rights enumerated under Section 4 of Republic Act No. 8293.

Section 2. Interpretation – These Regulations shall be liberally construed to carry out the objectives of the IP Code and IP Laws and to assist the parties in obtaining just and expeditious settlement or disposition of administrative cases filed before the Office.

Section 3. Suppletory Application of the Rules of Court – These Regulations shall primarily govern in the prosecution of administrative complaints in the Bureau. The provisions of the Rules of Court, however, shall apply in a suppletory character.

RULE 2

COMMENCEMENT OF ACTION

Section 1. Complaint, When and to Whom Filed - All administrative complaints for violation of the IP Code or IP Laws shall be commenced by filing a verified complaint with the Bureau within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation. A complaint is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information, and belief" or lacks proper verification, shall be treated as an unsigned pleading.

The complaint shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies; Provided, however, that if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the complaint, the party concerned undertakes to notify the Bureau within five (5) days from such knowledge. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt.

Section 2. Original Jurisdiction – (a) The Bureau shall have original jurisdiction in administrative actions for violations of laws involving intellectual property rights where the total damages claimed are not less than two hundred thousand pesos (₱200,000.00); *Provided* however, that availment of the provisional remedies may be granted in accordance with these Regulations and the provisions of the Rules of Court; The Director shall coordinate with local enforcement agencies for the strict and effective implementation and enforcement of these Regulations.

The commencement of the action under these Rules and Regulations is independent and without prejudice to the filing of any action with the regular courts.

Section 3. Venue of Hearings. – All hearings on actions covered by these regulations shall be held within the premises of the Office.

Section 4. Formal Requirement. – The Complaint shall be typewritten and addressed to the Bureau, and shall contain the names and residences of the parties and a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer for such further or other relief/s as may be deemed just or equitable. Every pleading filed shall likewise contain

a caption setting forth the name of the Office and the Bureau, the title of the case, the case number, and the designation of the pleading.

No pleading shall be accepted by the Bureau unless it conforms to the formal requirements provided by these Regulations and accompanied by the required filing fee.

Section 5. *Partners, Named Individually.* – When two or more persons associated in any business, transact such business under a common name, the associates may be sued under such common name.

The associates of the business who are sued under a common name may be named individually in the Answer filed by them or on their behalf with their respective postal addresses.

Section 6. *Payment of Filing Fee and Docketing.* - The complaint shall be filed in triplicate with the Bureau, which shall issue an order for the payment of the required fee.

Upon payment of the required fee, the complainant, his counsel, or representative shall submit to the Bureau a copy of the official receipt and present the original copy thereof for comparison. Immediately after the receipt of proof of payment of the required fee, the Records Officer or any authorized officer of the Bureau shall acknowledge receipt of the papers by assigning the Administrative Complaint Number, docket the same, and raffle the case to any of the Hearing Officers.

Section 7. *Representation and Confidentiality of Records.* – (a) The complaint may be prosecuted by the complainant by himself or through counsel. The complainant and his counsel are required to conduct their business with politeness, decorum and courtesy.

(b) It is strictly and absolutely forbidden for the Director, and other employees of the Office to discuss the case or any phase thereof with either counsel of record in the absence of the other or with any third person not having any interest or legal standing before the Bureau.

Section 8. *Summons.* - (a) Within three (3) days from receipt of the complaint, the Staff Clerk shall prepare, and the Process Server shall serve, the Summons or Notice to Answer together with a copy of the complaint to the Respondent by mail or by personal service. If the service is done through registered mail, the return card shall be attached to the documents as evidence of receipt. The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy.

(b) If service cannot be made under the preceding paragraph, the office and place of residence of the party being unknown, service may be made by publication in a newspaper of general circulation, once a week for three (3) consecutive weeks and at the expense of the complainant. When a party summoned by publication failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party. If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the party by registered mail to his last known address.

(c) Any application for leave to effect service by way of publication shall be made by motion in writing, supported by affidavit of the complainant or some person on his behalf, setting forth the grounds for the application.

(d) When the service has been completed, the server shall within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the Hearing Officer who issued it, accompanied by proof of service.

Section 9. *Answer* - (a) The summons shall require respondent to answer the complaint within ten (10) days from receipt thereof. The respondent shall answer the complaint in writing, by either specifically denying the material allegations of the complaint or alleging any affirmative defense.

If the respondent fails to answer within the time allowed therefor, the Hearing Officer shall, *motu proprio* or upon motion of the complainant with notice to the respondent, and proof of such failure, declare the respondent in default. Thereupon, the Hearing Officer shall proceed to render judgment granting the complainant such relief as his pleading may warrant, unless the Hearing Officer in his discretion requires the complainant to submit evidence. All such decisions or orders shall comply with Rule 11 of these Regulations.

(b) A party declared in default may, at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such a case, the order of default may be set aside on such terms and conditions as the Hearing Officer may impose in the interest of justice.

(c) A party in default shall not be entitled to notice of subsequent proceedings, unless he files a motion to lift or set aside the order of default.

Section 10. *Answer to Amended Complaint.* – If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as answer to the amended complaint unless a new answer is filed within ten (10) days from receipt or service of the amended complaint.

Section 11. *Motion to Dismiss Not Allowed.* – No motion to dismiss on any of the grounds mentioned in the Rules of Court and in any other law shall be allowed except on the ground of prescription. Such grounds other than prescription shall instead be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer may, for good cause shown, conduct a preliminary hearing on any of the affirmative defenses if this will expedite the resolution of the case.

Section 12. *Pre-trial* - Upon joinder of issues, the pre-trial conference shall be set immediately by the Hearing Officer. The notice of said pre-trial shall be delivered by the Process Server within three (3) days from receipt of the answer or last pleading. The notice of pre-trial shall require the parties to submit a pre-trial brief containing the following:

- (a) A brief statement of the parties' claims and defenses;
- (b) Suggestions, if any, for simplification of issues;
- (c) A list of documents they intend to produce as evidence, together with appropriate markings as exhibits as well as the identification of witnesses and a statement of the substance and purpose of their testimony during the hearing on the merits. The originals of these documents must be produced for comparison during the pre-trial conference without prejudice to the presentation of additional documents during the trial if the party was prevented from producing the same during the pre-trial on account of fraud, accident, mistake, excusable negligence or such other reason which the Director or Hearing Officer deems justifiable in the interest of justice and fair play;
- (d) A statement whether they can stipulate on facts not covered by admissions in their pleadings. If so, they should come up with drafts of matters they are ready to stipulate on;
- (e) The limitation on the number of witnesses;

- (f) A statement whether they are open to the possibility of an amicable settlement; and
- (g) Such other matters as may aid in the prompt disposition of the action.

Section 13. *Effect of Failure to File Pre-Trial Brief or to Appear.* – The failure of the complainant to submit the Pre-Trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to declare respondent as in default *motu proprio* or upon motion and to allow the complainant to present his evidence *ex-parte* and the office to render judgment on the basis thereof.

Section 14. *Appearance of the Parties* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear on his behalf fully authorized in writing to enter into an amicable settlement and to enter into stipulations or admissions of facts and of documents.

Section 15. *Effect of Failure to File Pre-trial Brief or to Appear in the Pre-trial Conference* - The failure of the complainant to submit the Pre-trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to allow the complainant to present his evidence *ex-parte* and the Bureau to render judgment on the basis thereof.

Section 16. *Record of Pre-Trial Results.* – After the Pre-Trial, the Hearing Officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered, controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

Section 17. *Pre-Trial Calendar.* – The Hearing Officer shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. After preparing Notice of Pre-Trial, it shall be the duty of the designated clerk of the Bureau to place such case in the pre-trial calendar.

RULE 3

POWERS OF HEARING OFFICERS

Section 1. *Powers of Hearing Officers.* – (a) A Hearing Officer conducting the hearing and investigations shall be empowered to administer oaths and affirmations; issue subpoena and subpoena *duces tecum* to compel attendance of parties and witnesses and the production of any book, paper, document, correspondence and other records which are material to the case; grant provisional remedies in accordance with these Regulations and the Rules of Court; and make preliminary rulings on questions raised at the hearings, with the ultimate decision on the merits of all the issues involved being left to the Director.

(b) Furthermore, a Hearing Officer as alter ego of the Director, shall have the power to cite a party or counsel or any person in contempt in accordance with these Regulations.

(c) The Hearing Officer shall likewise have the power to pass upon and approve bonds and counterbonds that may be posted by the parties; the bond or counterbond shall be

in the form of cash, cashier's or manager's check issued in the name of the Intellectual Property Office.

Section 2. *Service of Subpoena.* Service of Subpoena shall be made at least three (3) calendar days before the scheduled hearing so as to allow the witness reasonable time for preparation and travel to the place of attendance.

Section 3. *Quashing a Subpoena Duces Tecum.* The Hearing Officer, upon motion made before the time specified in a subpoena *duces tecum* for compliance therewith, may quash the subpoena if it is unreasonable or the relevance of the books, papers, documents, correspondence and other records does not appear, or if the person on whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

RULE 4

PRELIMINARY ATTACHMENT

Section 1. *Grounds Upon Which Attachment May Issue.* – At the commencement of the action or at any time before entry of judgment, a complainant or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action against a party who has been guilty of fraud in procuring the registration of a mark in the Office by false or fraudulent declaration or representation, whether oral or in writing, or by any false means;
- (b) In an action against a party who has employed deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals or his business or services for those of the one having established such goodwill, or who shall commit any act calculated to produce said result whether or not a mark is involved;
- (c) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication;
- (d) In an action for the recovery of a specified amount of money or damages on a cause of action arising from a violation of the IP Code against a party who is about to depart from the Philippines with intent to evade the execution of judgment; or
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud the aggrieved party.

Section 2. *Issuance and Contents of Order.* – An order of attachment may be issued either *ex-parte* or upon motion with notice and hearing conducted by the Hearing Officer. The Hearing Officer shall determine whether the attachment sought is meritorious or not. Should an order of attachment be issued by the Hearing Officer, he shall sign and forward the order to the Director who shall direct, without delay, the officer or such other designated employee of the Bureau to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs.

Section 3. *Affidavit and Bond Required.* – An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the

property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit and the receipt evidencing payment of the bond must be duly filed with the Hearing Officer and forwarded to the Office of the Director before the order issues.

Section 4. Condition of Applicant's Bond – The party applying for the order must give a bond executed to the adverse party in the amount fixed by the Hearing Officer in his order granting the issuance of the writ, conditioned that the applicant will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the Hearing Officer shall finally adjudge that the applicant was not entitled thereto.

Section 5. Manner of Attaching Property. – The officer enforcing the writ shall, without delay and with all reasonable diligence, attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former files a counterbond, in an amount equal to the bond fixed by the Hearing Officer in the order of attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ shall be enforced unless it is preceded, or accompanied by service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment on the defendant within the Philippines.

The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines.

Section 6. Sheriff's Return. – (a) After enforcing the writ, the sheriff must likewise, without delay, make a return thereon to the Hearing Officer from whom the writ issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counterbond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

(b) The sheriff shall submit a report to the Hearing Officer on the action taken on all writs and processes assigned to them within twenty (20) days from receipt of said process or writ. Said report shall form part of the records of the case.

(c) At the end of every month, said Hearing Officer shall submit a report to the Director indicating therein the number of writs and processes issued and served, as well as the number of writs and processes unserved during the month and the names of the sheriffs who executed each writ. Unserved writs and processes shall be explained in the report.

Section 7. What May be the Subject of Attachment and the Manner of Executing the Same. – The following properties may be the subject of attachment:

(a) **Real Properties** – Real properties, or the machineries that may be found inside the premises belonging to the party against whom the writ is issued, or any interest therein, by filing with the Registry of Deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the city or province where the property is located. The Registrar of Deeds must index attachments filed under this section in the name of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of the land or interest to be affected shall be included in the registration of such attachment.

(b) *Personal Properties.* – Those personal properties capable of manual delivery, by taking such properties after issuing the corresponding receipt therefore. The sheriff shall thereafter deliver the attached properties to the complainant or proper party who shall be responsible for the custody, safekeeping, preservation, and the inventory and return of said properties to the other party or proper party upon termination of the case.

(c) *Shares of Stocks* – Shares of stocks or an interest in shares of stocks of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ.

Section 8. *When Attached Property May Be Sold After Levy on Attachment and Before Entry of Judgment.* – Whenever it shall be made to appear to the Hearing Officer, upon hearing with notice to both parties, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the Hearing Officer may order such property to be sold at public auction in such manner as he may direct, and the proceeds of such sale to be deposited as the Director may prescribe to await the judgment in the action.

Section 9. *Discharge of Attachment Upon Giving Counterbond.* – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The Hearing Officer shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counterbond with the Office of the Director in an amount equal to that fixed by the Hearing Officer in the order of attachment, exclusive of costs. But if the attachment sought to be discharged is with respect to a particular property, the counterbond shall be equal to the value of that property as determined by the Hearing Officer. The cash deposit or the counterbond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or filing the counterbond, or to the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be or become insufficient, and the party furnishing the same fails to file an additional counterbond, the attaching party may apply for a new order of attachment.

Section 10. *Discharge of Attachment on Other Grounds* - The party whose property has been ordered attached may file a motion with the Hearing Officer before whom the case is pending, before or after levy or even after release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the property being attached is exempt from execution. If the attachment is excessive, the discharge shall be limited to the excess. If said motion be made on an affidavit, the attaching party may oppose the same by a counter-affidavit or other evidence in addition to that on which the attachment was made. After due notice and hearing, the Hearing Officer shall order the setting aside or the discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith, or the property being attached is exempt from execution.

Section 11. *When the Property Attached is Claimed by Third Person.* – If the property attached is claimed by a person not a party to the proceeding, and such person makes an affidavit of his title thereto, or right to the possession thereof, and serves such affidavit upon the sheriff and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment unless the attaching party or his agent, on demand of the sheriff shall file a bond approved by the Hearing Officer to indemnify the third party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the Director. No claim for

damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within sixty (60) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for the taking or keeping of such property, to any such third party claimant, if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third party claimant who filed a frivolous or plainly spurious claim, in the same or in a separate action.

Section 12. Satisfaction of Judgment out of Property Attached; Sheriff's Return. – If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

(a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the Bureau, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough property remain in the sheriff's hands for that purpose, or in those of the Office of the Director.

The sheriff shall forthwith make a return to the Hearing Officer of his proceedings under this Section and furnish the parties with copies thereof.

Section 13. Balance Due Collected Upon an Execution; Excess Delivered to Judgment Obligor. – If after realizing upon all the property attached, and applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.

Section 14. Disposition of Money Deposited - Where the party against whom attachment had been issued has deposited money, it shall be applied under the direction of the Director to the satisfaction of any judgment rendered in favor of the attaching party, and after satisfying the judgment the balance shall be refunded to the depositor or his assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee.

Section 15. Disposition of Attached Property Where Judgment is for Party Against Whom Attachment was Issued. – If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment and all property attached remaining in such officer's hands, shall be delivered to the party against whom attachment was issued, and the order of attachment discharged.

Section 16. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. – An application for damages on account of improper, irregular or excessive attachment must be filed with the Director before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If, on appeal, the judgment of the Director-General be favorable to the party against whom the attachment was issued, the latter may claim damages sustained during the pendency of the appeal by filing an application in the Office of the Director-General, with notice to the party in whose favor the attachment was issued, before the judgment of the

Director-General becomes executory. The Director-General may remand the application to the Bureau for hearing and decision.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

RULE 5

PRELIMINARY INJUNCTION

Section 1. *Preliminary injunction defined; who may grant.* - preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party to an administrative case or any third person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

A preliminary injunction may be granted by the Hearing Officer who is hearing the case but no such power can be exercised as against a concurrent court or other Office which has already acquired jurisdiction over the subject matter.

Section 2. *Grounds for Issuance of Preliminary Injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party or any person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding and tending to render the judgment ineffectual.

Section 3. *Verified Application and Bond for Preliminary Injunction or Temporary Restraining Order.* – A preliminary or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded;

(b) Unless exempted, the applicant files with the Bureau a bond executed to the party or person enjoined in an amount to be fixed by the Hearing Officer, to the effect that the applicant will pay to such party or person all damages which the latter may sustain by reason of the injunction or temporary restraining order if the Hearing Officer should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond upon

the adverse party in the Philippines. However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all the parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the Hearing Officer to whom the case was raffled and to whom the records shall be transmitted immediately.

If it shall appear from the facts shown that great or irreparable injury would result to the applicant, the Hearing Officer to whom the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within said twenty day period, the Hearing Officer must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

Section 4. *Preliminary Injunction not Granted Without Notice; Exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. Should the petition be granted after compliance with the requirement of due process, the Hearing Officer shall issue an order enjoining the party against whom it is issued from further committing acts detrimental or injurious to the applicant effective for a period of time not exceeding ninety (90) days as may be determined by the Hearing Officer with the concurrence of the Director without prejudice to the filing of a counterbond as provided in subsequent sections.

Section 5. *Grounds for Objection to, or for Motion of Dissolution of, Injunction or Restraining Order.* – The application for injunction or restraining order may be denied, upon showing of its insufficiency. The injunction or restraining order may also be denied, or if granted, may be dissolved, on other grounds upon affidavit of the party or person enjoined, which may be opposed by the applicant also by affidavit. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the Hearing Officer conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

Section 6. *When Final Injunction Granted.* – If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the Hearing Officer shall grant a final injunction perpetually restraining the party or person enjoined from further commission of the act or acts or confirming the preliminary mandatory injunction.

RULE 6

CONTEMPT

Section 1. *Direct Contempt Punished Summarily.* – A person guilty of misbehavior in the presence of or so near the Director or Hearing Officer as to obstruct or interrupt the proceedings before him, including disrespect toward the Director or Hearing Officer, offensive personalities toward others, or refusal to be sworn to or answer as a witness, or to subscribe to an affidavit or deposition when lawfully required to do so, may be summarily adjudged in

contempt by the Director or Hearing Officer and punished by fine not exceeding Two Thousand Pesos (₱ 2,000.00) or imprisonment not exceeding ten (10) days, or both.

Section 2. Indirect Contempt to be Punished After Charge and Hearing. – After a charge in writing has been filed, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt by the Director:

- (a) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of the Hearing Officer, or injunction granted by him;
- (b) Any abuse of or unlawful interference with the process or proceedings of the Bureau, not constituting direct contempt under Section 1 of this Rule;
- (c) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice or the performance of the Bureau's proper function;
- (d) Failure to obey a subpoena duly served;
- (e) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him; or
- (f) The submission of a false certification, without prejudice to the filing of the appropriate civil and/or criminal action, or non-compliance with any undertaking regarding commencement of actions.

But nothing in this section shall be so construed as to prevent the Director from issuing process to bring the respondent party into or before the Bureau, or from holding him in custody pending such proceedings.

Section 3. Contempt Proceedings - Proceedings for indirect contempt may be initiated *motu proprio* by the Bureau by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions. If the contempt charges arose out of or are related to principal action pending in the Bureau, the petition shall be docketed, heard, and decided separately, unless the Bureau in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

Section 4. Hearing; Release on Bail. – If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the Director or Hearing Officer, for his appearance to answer the charge. On the day set for the hearing, the Director or Hearing Officer shall proceed to investigate the charge and consider such answer or testimony as the respondent may make or offer.

Section 5. Punishment for Indirect Contempt .– If the respondent is thereupon adjudged guilty of indirect contempt committed, he may be punished by a fine not exceeding Thirty Thousand Pesos (₱ 30,000.00) or imprisonment of not more than six (6) months, or both, and if the contempt consists in the violation of an injunction, he may also be ordered to make a complete restitution to the party injured by such violation.

Section 6. Imprisonment Until Order Obeyed. – When the contempt consists in the omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the Hearing Officer until he performs it.

Section 7. *Proceedings When Party Released on Bail Fails to Answer.* – When a respondent released on bail fails to appear on the date fixed for the hearing, the Hearing Officer may issue another order of arrest or may order the bond for his appearance to be prosecuted, or both; and, if the bond be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted, and the costs of the proceedings, and such recovery shall be for the benefit of the party injured. But if there is no aggrieved party, the bond shall be liable and disposed of as in criminal cases.

Section 8. *Hearing Officer May Release Respondent.* – The Director or the Hearing Officer may discharge from imprisonment a person imprisoned for contempt when it appears that public interest will not suffer thereby.

Section 9. *Review of Judgment or Order by the Director.* – The judgment or order of the Hearing Officer made in a case of direct contempt punished after written charge and hearing may be reviewed by the Director, but execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the Hearing Officer conditioned that if the appeal be decided against him he will abide by and perform the judgment or order.

RULE 7

CALENDAR AND ADJOURNMENTS

Section 1. *Trial Calendar.* – The staff clerk shall have a trial calendar for the cases that have passed pre-trial stage. Cases where there is a prayer for preliminary mandatory injunction and/or attachment shall be given preference.

Section 2. *Notice of Trial.* – Upon entry of a case in the trial calendar, the staff clerk shall cause a notice of the date of its trial to be served upon the parties within three (3) days by the process server.

Section 3. *Continuous Trial.* – All hearings shall be continuous until the case is terminated subject to exceptions provided under Section 2 of Rule 9.

Section 4. *Raffle of Cases.* – Actions which are to be conducted before this Bureau shall be raffled to the different Hearing Officers who shall thereafter handle the proceeding from its commencement until its final resolution. However, should the Hearing Officer to whom the case was raffled be unavailable during any scheduled hearing, upon request of either counsel, the Director shall designate an appropriate officer to preside or conduct the proceedings.

RULE 8

DEPOSITIONS AND DISCOVERIES

Section 1. *Deposition pending action.* – By leave of the Hearing Officer after the Answer has been filed, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon written interrogatories. The attendance of witness through a subpoena may be compelled under Section 2(d) of Rule VI.

Section 2. *Effect of Taking Depositions.* – A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

Section 3. *Stipulations Regarding Taking of Depositions.* – If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at anytime or place, in accordance with the Rules of Court, and when so taken may be used like other depositions.

Section 4. *Period Within Which to Submit Answers to Written Interrogatories.* – Should a party request to take the deposition of a non-resident in a foreign land, the answer to such written interrogatories must be submitted to the Hearing Officer handling the case within six (6) months from the date of issuance of the Letters Commission, without extension. Failure to submit the same within the period shall result in the striking off of said deposition and the affidavits of such deponent.

RULE 9

HEARING

Section 1. *Trial of Cases.* – The Hearing Officer shall, as far as practicable, set the case for successive and continuous daily hearing for the reception not only of the evidence in chief but also on any provisional remedy prayed for in the complaint or petition; *Provided*, however, that the hearing of the case on the merits or the reception of evidence of the parties shall be terminated within ninety (90) days, thirty (30) days to be allotted to complainant's or petitioner's evidence, thirty (30) days for respondent, and thirty (30) days for any rebuttal and sur-rebuttal evidence. In the case of provisional remedies, the hearings or reception of evidence thereof shall be terminated within thirty (30) days.

Section 2. *Postponement of Hearings.* – Postponement of hearings shall be allowed only on extremely meritorious grounds provided, that the reception of evidence of the parties shall not exceed the periods provided under the preceding section.

Section 3. *Order of Trial.* – Unless the Hearing Officer, for special reasons, otherwise directs, the order of trial shall be as follows:

(a) The complainant or petitioner must produce evidence in support of his allegations in the complaint or petition. The affiants/witnesses whose affidavits were submitted must be subject to a cross examination by the opposing counsel on the basis of their affidavits.

(b) The respondent shall then offer evidence in support of his defense, counterclaim, cross-claim, and third-party claim subject to cross-examination by complainant or petitioner or his counsel.

(c) The third party-respondent, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third-party claim.

(d) The fourth party, and so forth, if any, shall introduce evidence of the material facts pleaded by him.

(e) The parties against whom any counterclaim or cross-claim has been pleaded shall introduce evidence in support of their defense, in the order to be prescribed by the Hearing Officer.

(f) The parties may then respectively offer rebutting evidence only, unless the Hearing Officer, for good reasons, in the furtherance of justice, permits them to offer additional evidence pertinent to the original issue.

(g) When the presentation of evidence is concluded, the parties may submit their respective memoranda within ten (10) days from date of the last hearing. Unless otherwise provided for by special laws, the appropriate final pleadings required of the parties to be submitted shall include a draft of the decision/resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The Hearing Officer may adopt, in whole or in part, either of the parties' draft decisions/resolutions, or reject both. This requirement shall likewise be applied to orders other than final judgment.

Section 4. *Agreed Statements of Facts.* – (a) The complainant and the respondent may agree in writing upon the facts involved in the action and ask judgment upon the facts agreed upon, without the introduction of evidence. The Hearing Officer shall immediately prepare the decision and submit it to the Division Chief of the Administrative Complaints Division who shall recommend the same to the Director for his approval, if the agreed statement of facts is sufficient to support a decision.

(b) If the parties can agree only on some of the facts in issue, a hearing shall be held as to the others.

Section 5. *Period for Resolving Cases.* – Unless a different period is fixed by special laws, all contested cases or any incident thereof shall be decided or resolved within thirty (30) calendar days from submission for decision or resolution by the Bureau.

Section 6. *Consolidation.* – When actions involving a common question of law or fact are pending before the Bureau, the Hearing Officer may order a joint hearing or trial on any or all the matters in issue in the actions. It may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

RULE 10

EVIDENCE

Section 1. *Evidence Required.* – Substantial evidence shall be sufficient to support a decision or order.

A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to support or justify a conclusion.

Section 2. *Documentary Evidence* - Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the custody of a public officer, a certified copy thereof may be accepted.

Section 3. *Director or Hearing Officer not Bound by Technical Rules of Evidence* - The Director or Hearing Officer shall receive relevant and material evidence, rule on offer of evidence and exclude all irrelevant matters, and shall act according to justice and fairness. The Bureau, in the exercise of its power to hear cases within its jurisdiction shall not be strictly bound by the technical rules of evidence. The Bureau shall, however, take judicial cognizance of the official acts of the legislative, executive and the judicial departments of the Philippines, the laws of nature, scientific facts as published in treatises, periodicals, or pamphlets and other facts which are of public knowledge or general knowledge as would enable the Director or Hearing Officer to rule upon the technical issues in the case.

Section 4. *Burden of Proof in Process Patents.* – If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the Director shall adopt measures to protect, as far as practicable, his manufacturing and business secrets.

Section 5. *Power to Stop Further Evidence.* – The Hearing Officer may stop the introduction of further testimony upon any particular point when the evidence is already so full

that more witness to the same point cannot be reasonably expected to be additionally persuasive. The Hearing Officer, however, should exercise this power with caution so as not to cause manifest injustice to the parties.

Section 6. *Equitable Principles to Govern Proceedings.* – In all cases involving intellectual property rights, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied.

RULE 11

DECISIONS AND ORDERS

Section 1. *Rendition of Decisions.* – (a) The case is deemed submitted for resolution upon termination of the period for reception of evidence provided in Section 1 of Rule 9 and the evidence formally offered. Whether or not the parties submit a final pleading such as memorandum, the case shall be decided by the Bureau within thirty (30) calendar days from submission as provided herein.

All decisions determining the merits of cases shall be in writing, stating clearly and distinctly the facts and law on which they are based and signed by the Director.

(b) Decisions and final orders shall be served by mail, personal service or publication as the case may require.

RULE 12

ADMINISTRATIVE PENALTIES AND SANCTIONS

Section 1. *Administrative Penalties Imposable.* – After formal investigation, the Director, may impose one (1) or more of the following administrative penalties:

(a) Issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the Order;

(b) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(i) An assurance to comply with the provisions of the Intellectual Property Law violated;

(ii) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigations;

(iii) An assurance to recall, replace, repair or refund the money value of defective goods distributed in commerce;

(iv) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau;

The Director may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking.

- (c) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director, such as by sale, donation to distressed local government units or to charitable or relief institutions, exportation recycling into other goods, or any combination thereof, under such guidelines as he may provide;
- (d) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;
- (e) The imposition of administrative fines in such amount as deemed reasonable by the Director, which shall in no case be less than Five Thousand Pesos (₱5,000.00) nor more than One Hundred Fifty Thousand Pesos (₱150,000.00). In addition, an additional fine of not more than One Thousand Pesos (₱1,000.00) shall be imposed for each day of continuing violation;
- (f) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director may deem reasonable which shall not exceed one (1) year;
- (g) The withholding of any permit, license, authority or registration which is being secured by the respondent from the Office;
- (g) The assessment and award of damages;
- (h) Censure;
- (i) Other analogous penalties or sanctions such as those provided under Section 216 of Republic Act No. 8293.

RULE 13

JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF

Section 1. *Rendition of Judgments and Final Orders.* – A judgment or final order determining the merits of the case shall be in writing, stating clearly and distinctly the facts and the law on which it is based, signed by the Director, and filed with the appropriate Register of the Office.

Section 2. *Entry of judgments and Final Orders.* – If no appeal is filed within the time provided in these Regulations, the Director shall forthwith cause the entry of the judgment or final order in the appropriate Register of the Office. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the Director, with a certificate that such judgment or final order has become final and executory.

Section 3. *Order and Writ of Execution.* -- As soon as a decision or order has become final and executory, the Director shall, *motu proprio* or on motion of the interested party issue an order of execution deputizing and requiring the appropriate officer or personnel of the Office, or such other duly authorized government agent, officer, or personnel, to execute and enforce said decision or order.

Section 4. *Execution Pending Appeal.* – On motion of the prevailing party with notice to the adverse party or *motu proprio* and upon filing of an approved bond, the Director may, in his discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in the order. The execution pending appeal may be stayed by the filing of an approved counterbond in an amount to be fixed by the Director.

RULE 14

APPEAL

Section 1. *Finality of Decision and Order.* – (a) The decision and order of the Director shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party affected unless within the said period an appeal to the Director General has been perfected.

(b) Decisions of the Director-General shall be final and executory unless an appeal to the Court of Appeals or the Supreme Court is perfected in accordance with the Rules of Court applicable to appeals from decision of Regional Trial Courts.

(c) Interlocutory orders shall not be appealable.

(d) No motion for reconsideration of the decision of the Director General shall be allowed.

Section 2. *Appeal, How Perfected.* – Appeal may be perfected by filing a Notice of Appeal with the Director General and the Director and a copy thereof served upon the adverse party within fifteen (15) days from receipt of the order or Decision and upon payment of the corresponding docket fee.

FINAL PROVISIONS

Section 1. *Separability.* If any provision in these Regulations or application of such provision to any circumstance is held invalid, the remainder of these Regulations shall not be affected thereby.

Section 2. *Furnishing of Certified Copies.* Mr. Eduardo Josen, Records Officer II, is hereby directed to immediately file three (3) certified copies of these Regulations with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines, and the National Library.

Section 4. *Effectivity.* These rules and regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 28th day of March 2001.

Approved:

EMMA C. FRANCISCO, *Director General*

Recommended By:

ESTRELLITA BELTRAN-ABELARDO, *Director, Bureau of Legal Affairs*