



**Asociación Interamericana de la Propiedad Intelectual**  
**Inter-American Association of Intellectual Property**  
**Associação Interamericana da Propriedade Intelectual**

## **REGULATION OF THE PROCEDURE OF THE ASIPI TRIBUNAL**

### **TITLE I** **OF THE PROCEDURE BEFORE THE ASIPI TRIBUNAL**

#### **CHAPTER I** **Scope of Application. Jurisdiction**

Article 1. The ASIPI Tribunal exercises jurisdiction and the powers set forth in Chapter V of the Bylaws of the Association. This Regulation shall be applicable by the Tribunal for the investigation and resolution of the disciplinary causes related to the violation of the Bylaws of the Association, of the Rules of the Association, of the Code of Professional Ethics of the Association, on the breach of the good image of ASIPI and the transgression of any mandatory provision of ASIPI, the handling of which is not assigned to a different body pertaining to ASIPI.

#### **CHAPTER II** **General Provisions**

Article 2. The procedure followed before the ASIPI Tribunal will be conducted within the following general principles:

- i. fairness
- ii. investigation, and ongoing process (ex officio)
- iii. material truth
- iv. due process and right to a defense ("audi alteram partem")
- v. challenge
- vi. good faith and loyalty
- vii. respect for the honor and dignity, and the presumption of innocence unless proven otherwise
- viii. gradation and proportionality
- ix. reasonable term
- x. statute of limitation
- xi. grounds for the decision

Article 3. The Associate subjected to a proceeding before the ASIPI Tribunal has the right to the respect for his/her honor and to the recognition of his/her dignity, and shall

be presumed innocent until the establishment of his/her responsibility by the final judgment ruled by the ASIPI Tribunal and issued with the warranties of due process.

## CHAPTER III PROCEDURE

### Paragraph I

#### Article 4. Abbreviated Expressions.

For the purposes of this Regulation, the following shall be defined as:

"Lawsuit", the exercise of an action when the actor wishes to take part in the procedure.

"Requirement", the act by means of which the Executive Committee acting on its own initiative, by request of an official body of the Association or an Associate, informs the ASIPI Tribunal of a matter in order for it to be ruled.

#### Article 5. Notices and terms.

- a) Any notice or other communication that must be made by virtue of this Regulation, shall be made in writing sent by mail that guarantees proof of delivery and to the facsimile number or to the email address indicated by the parties, without prejudice of the special rules established for the writ of summons in accordance with Article 17 of this Regulation.
- b) A decision, resolution or ruling shall be deemed notified the date on which the corresponding written communication has been delivered to the parties and in case of using electronic means (email or facsimile), the date on which either of them has been transmitted.
- c) To determine the compliance of a deadline, it will be considered that a communication has been sent successfully if it has been transmitted in compliance with paragraphs a) and b) of this section.
- d) For the purposes of the length of the terms set forth in the Regulation, these shall be counted as from the day following the one of the safe receipt of the notice and the days shall be considered as working days. All of terms that are due on a non-working day shall be extended to the following working day. For all legal effects of this Regulation, only Saturdays and Sundays will be considered as non-working days.

Article 6. Statute of Limitation. The action shall lapse three (3) years after the act, event or omission which is the basis of the action taken place.

Paragraph II  
Of the initiation of the procedure

Article 7. The causes of competence of the ASIPI Tribunal will begin with the lawsuit or requirement, as the case may be and as defined in this Regulation.

Article 8. Any Associate or the Executive Committee (hereinafter also "the claimant"), may file a lawsuit or requirement regarding unethical behaviors in which an Associate (hereinafter "the defendant") may have incurred, or due to the violation or disregard of another of ASIPI's mandatory standards, for which no other ASIPI bodies have jurisdiction.

Article 9. The lawsuit or requirement shall be submitted in writing and must at least always contain the following:

- i. Complete identification of the claimant (full name, or business name and full names of legal representatives, actual address).
- ii. Complete identification of the defendant (complete name).
- iii. A detailed account of the acts, events or omissions on which it is based.
- iv. Listing of the proofs thereof that are intended to be used, enclosing all of the ones that are in their possession, and indicating the place where to find those that are not currently in their possession, without prejudice to the inquisitorial capacity of the Tribunal.
- v. Sequentially indicate a real address, a facsimile number and an email address (or another technological equivalent that the ASIPI Tribunal may determine) that the interested party establishes for its notifications.

Paragraph III  
Of the development of the procedure

Article 10. The lawsuit or requirement shall be filed before the Secretary of the Association, who shall proceed as set forth in Article 32 of ASIPI Bylaws, for the creation of the corresponding Chamber and continuance of the procedure.

Article 11. The Tribunal shall hear and rule the matters subjected to their knowledge by a Chamber of three of its members chosen by lot by ASIPI Secretary, among the Judges that do not have any inability or lack of manifest fairness to decide the matter, except in the case referred to in Article 30 of this Regulation, of which the ASIPI Tribunal will hear in full.

Article 12. A former President of ASIPI will chair the Chamber, who shall act as such only during the course of the particular process under study.

Article 13. The Judges of the Tribunal will be notified of their appointment for the constitution of the Chamber by the ASIPI Secretary, and they must accept or reject the position and promise to carry out their duties faithfully within the next ten (10) days

counted as from their appointment, which must be done in writing, by facsimile or electronic mail addressed to the ASIPI Secretary.

Article 14. If for any reason the number of Judges of the ASIPI Tribunal decreased to nine (9), the Executive Committee shall immediately proceed to make new complementary appointments, following henceforward the same proceeding to complete or maintain said number.

Article 15. It shall constitute a serious misconduct against the Bylaws, the fact that a Judge does not timely provide, without just cause, his/her legal opinion regarding a case submitted to the knowledge of the Chamber of which he/she is a part of.

When a Judge becomes incompetent or does not timely provide his/her legal opinion, the corresponding Chamber will be established as from the moment in which the incompetence arises or the delay begun by another Judge appointed in the same way as the original judges, without losing the validity of the whole procedure previously executed.

Article 16. After the Chamber has been created, it shall examine the terms of the lawsuit or requirement, and based on them shall decide on:

- i. the admissibility of the case;
- ii. the dismissal of the lawsuit or requirement, through a well-founded resolution, when the same do not comply with the conditions established in Article 9 of this Regulation, when they are clearly inadmissible, unfounded or ones in which it is clear that the ASIPI Tribunal lacks jurisdiction.

Article 17. If the cause is admitted, the Secretary of the Tribunal shall serve notice of the lawsuit or requirement to the defendant, summoning him/her so that in a thirty (30) day term he/she appears before the Chamber, submits his/her defense, offers challenging evidence, appoints an attorney as the case may be, alleges what he/she deems convenient for his/her rights, and sequentially indicates a real address, a facsimile number and an email address (or another technological equivalent that the ASIPI Tribunal may determine) for further notices that may be issued.

The summons will be notified to the Associate by electronic means to the electronic address that he/she has created when joining ASIPI. The term will run as from the following day to the one in which the notification has been served by the Secretary of the Tribunal or in which he/she has issued the proof showing that the Associate has been notified in case of resistance or rejection.

Article 18. The following are the rights of the Associate subjected to a disciplinary procedure before the ASIPI Tribunal:

- i. right to be assisted -at his/her own cost- by a translator or interpreter, if he/she does not understand or speak any of the official languages of ASIPI;
- ii. to receive a previous communication, detailed and thorough including the submitted accusation;

- iii. right to defend himself/herself personally or to be assisted -at his/her own cost- by a lawyer of his/her choice and to communicate freely and privately with his/her attorney;
- iv. right to submit, produce and serve proofs to clear up the material truth of the acts, events or omissions on which the procedure is based;
- v. right not to be compelled to testify against himself/herself or to plea guilty.

Article 19. Notwithstanding the foregoing, the Associate subjected to a disciplinary procedure before the ASIPI Tribunal shall cooperate with the investigation answering all of the questions and providing the information deemed relevant.

Article 20. All the procedures referred to in this Regulation shall be private and confidential, up until the final judgment of the ASIPI Tribunal.

Article 21. Upon receipt of the answer of the defendant or in its absence, the Tribunal shall proceed to the following:

- i. if the nature of the cause is conciliatory, in the sole opinion of the Tribunal and without appeal, the Tribunal will contact the claimant and the defendant to propose conciliatory methods and bridge positions, establishing the corresponding deadlines.
- ii. In case the conciliation efforts have failed, the Tribunal shall delimit the subject matter of the procedure, decide whether there are facts susceptible of investigation and, also, if proofs are required to be submitted by the claimants who have expressed their intention to pursue the proceeding; the Tribunal shall establish the points of investigation and the acts, events or omissions on which the evidence shall rely, as well as the admissible evidence, and shall decree the admittance of evidence in the proceedings within a sixty (60) day term.

Article 22. Without prejudice to the ex-officio impulse of the procedure, the claimant will have the legal faculty to expedite the matter, provide all relevant evidentiary measures regarding the existence of the acts, events or omissions attributed to the defendant and to his/her possible responsibility, and control their production.

Article 23. The claimant may withdraw his/her lawsuit or requirement at any stage of the proceeding, without prejudice to the faculty of the ASIPI Tribunal to continue its prosecution ex-officio. In said case, the claimant will be obliged to provide the Tribunal with the evidentiary measures indicated in his/her lawsuit and to cooperate with the Tribunal in all that it requires for the purposes of the cause of action of the proceeding.

Article 24. The investigation and service of the proofs will be made by the Tribunal carrying out the actions deemed convenient by the Secretary of the Tribunal. The Tribunal shall ensure that the procedure determines the material truth of the acts, events or omissions subjected to the cause of action and for said purpose shall have the widest inquisitorial powers and production of proof, being able to request ex-officio and as a measure to better decide, whichever it deems necessary. The Tribunal may dismiss those proofs that are of manifest inadmissibility or irrelevance or prohibited by

law. The Tribunal's decision that dismisses them shall be well-founded, under penalty of nullity. The hearings shall be of mandatory attendance or by teleconference, in the way, date and place (if applicable) that the Tribunal determines.

Article 25. The procedure shall be conducted under the standards of the due process generally accepted and the Tribunal shall heed the evidence in good conscience, and the Secretary shall act as the Certifying Officer thereof.

Article 26. Once the terms of the investigation and the processing of the proofs have concluded, before issuing the decision, the Tribunal shall serve final notice to the parties of all of the proceedings, for a fifteen (15) day term, in order for them to submit their closing arguments.

Article 27. In any case the final decision shall be issued and notified within the next thirty (30) days after the term for the submission of the closing arguments has concluded.

Article 28. The Tribunal's decision shall be well-founded, and shall rule on the subject matter of the procedure, and in any case on the following points:

- i. whether or not the acts, events or omissions alleged against the defendant are proven;
- ii. if such acts, events or omissions violate the Bylaws of the Association, the Regulation of the Association, the Code of Professional Ethics of the Association, attempting against the good image of ASIPI and/or the transgression of any mandatory provision of ASIPI, the handling of which is not assigned to a different body pertaining to ASIPI;
- iii. if it is appropriate to acquit or convict the defendant;
- iv. if an adverse ruling is handed, the penalty to be applied and the time for its compliance.

Article 29. The entire procedure may not take more than six (6) months counted as from the date on which the ASIPI Tribunal's resolution was enforceable, by means of which it declared the admission of the lawsuit or requirement, until the final judgment is rendered by the Tribunal, the Tribunal being able, through a well-founded resolution, to extend said term for four (4) additional months. The deadlines of the foreseen terms do not release the Tribunal from its obligation to pronounce judgment, which must be met in the shortest term, notwithstanding the corresponding disciplinary measure with regard to the non-compliant Judge or Judges, as stipulated in Article 16 of this Regulation.

#### CHAPTER IV Of The Remedies and Sanctions

Article 30. Against the decisions, judgments and resolutions of the ASIPI Tribunal, it may only be filed an appeal before the Tribunal in full with the exclusion of the judges that have settled the case in the first instance, in accordance with Article 32 of the Bylaws. The deadline for filing an appeal is fifteen (15) days counted as from the

notification of the decision, judgment or resolution. In said case, the Tribunal must rule within a maximum term of two (2) months and return the case to the corresponding Chamber to comply with the decision of the Tribunal in full.

Article 31. In case of dispersion or lack of majority for any reason, the matter will be determined by the vote of the President of the Tribunal in full in accordance with the provisions set in Article 32 of the Bylaws.

Article 32. Once the ruling of the ASIPI Tribunal is final, it will be recorded by the Secretary of the Tribunal in the registry book of judgments and resolutions. Once the judgments imposing disciplinary measures are final, they shall be communicated to the Executive Committee so that it adopts the necessary measures to comply with the ruling. Except in the case of private admonition, the judgments will be communicated to the rest of the Associates by the means determined by the Executive Committee. At the request of the defendant, the acquittals must also be informed.

Article 33. Unless there is another sanction or penalty especially established in the Bylaws, Code of Professional Ethics, Regulations and other special rules of ASIPI applicable to the subject matter, the Tribunal may impose the following sanctions, in agreement to the seriousness of the matter and the previous conduct of the responsible party:

- a) Private admonition
- b) Public admonition
- c) Suspension of the exercise of rights of the Associate found guilty for a period of time between six (6) months and three (3) years
- d) Expulsion of the ASIPI Associate

Article 34. The Tribunal in its resolution may compel or require the defendant to perform certain acts or omissions in a specified term, with the caution of suffering a penalty that will be specified.

If within the corresponding deadline such act is not carried out or the omission verified, the Tribunal, in the procedure of compliance of the ruling, shall inform about this to the Executive Committee for the purpose of the enforcement of the sanction.

Article 35. Enrollment to ASIPI is voluntary, and implies the acceptance of the Bylaws of the Association, the Code of Professional Ethics, this Regulation, and any other rules and resolutions of ASIPI.

The Association -and the ASIPI Tribunal- will not be responsible before any of the parties for any act or omission of the Judges in the exercise of their position.

Article 36. The parties, and when accepting their appointment, the Judges, agree that any statement or written or oral comment formulated or used by them or their representatives during the procedure may not be invoked in order to initiate or support any action for oral or written defamation, or any other complaint of said nature, and that this Article may be invoked in order to oppose any action of such type.

CHAPTER V  
Tribunal Standards

Article 37. The ASIPI Tribunal, sitting in full court, may issue Tribunal Standards regarding the rules of the procedure of the ASIPI Tribunal, which will be subjected to ratification by the Administrative Council in order to have full effect.