Mexico’s New Intellectual Property Regime: Improvements in the Protection of Industrial Property, Copyright, License, and Franchise Rights in Mexico

Mexico’s recent enactment in June 1991 of the Law for the Promotion and Protection of Industrial Property (Industrial Property Law) completely revamps the Mexican industrial property regime and signals a significant step forward in Mexico’s efforts to join the global economy. While the Industrial Property Law increases the protection afforded most industrial property rights in Mexico to a level generally commensurate with that found in the industrialized nations, it should be noted that it still suffers from a number of flaws. Fortunately, the intellectual property provisions of the recently negotiated North American Free Trade Agreement (NAFTA) address the most significant of these flaws, and if NAFTA is adopted, Mexico’s protection of industrial property rights will truly be first-rate. As a consequence, Mexico will have dramatically improved its

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*Mr. McKnight is a shareholder of the Dallas, Texas, law firm of Locke Purnell Rain Harrell (A Professional Corporation).

**Mr. Müggenburg is a partner in the Mexico City law firm of Creel, García-Cuéllar y Müggenburg.

†The Editorial Reviewer for this article was Wade Channell.


2. North American Free Trade Agreement [hereinafter NAFTA], part 6, chapter 17. All references to NAFTA are to the October 7, 1992, draft. A similar version was previously initialed on October 2, 1992, by Canada, the United States, and Mexico. The NAFTA has not been legally adopted by the parties as of the date of this publication.
business climate and removed another barrier to attracting foreign investment and advanced technology.  

The passage of the Industrial Property Law and a companion piece of intellectual property legislation reforming significant aspects of Mexico's Copyright Law, did not, of course, occur in a political or economic vacuum. Following on the heels of reforms initiated by former President de la Madrid's administration, the current administration of President Carlos Salinas has recently taken a number of dramatic steps to attract foreign business to Mexico, principal among which were the promulgation of new regulations designed to liberalize the Foreign Investment Law of 1973 (Foreign Investment Law) and Transfer of Technology Law of 1982 (Transfer of Technology Law). Underlying these reform efforts, and particularly the negotiation and adoption of NAFTA, is a determination that Mexico's best hopes for a bright economic future require that it be a full participant in the international marketplace. In order to become internationally competitive, however, the Salinas administration realizes that it needs to complement its low labor costs, abundant natural resources, and entrepreneurial traditions with foreign inflows of capital and technology. The adoption of NAFTA is clearly the most definitive step Mexico can take to break with its isolationist past and attract these critical assets to its economic program. The Salinas administration has, however, wisely avoided pinning all of its hopes on the adoption of NAFTA and has unilaterally moved forward during the last few years to attract foreign capital and technology with a number of efforts, including regulatory reforms to its Foreign Investment Law and Transfer of Technology Law.

The passage of the Industrial Property Law, however, may be more significant than these past reforms because in this case the Salinas administration obtained the approval of the Mexican Congress for a fundamental component of the admin-

3. See generally R. SHERWOOD, INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT (1990) (using empirical data from case studies of Mexico and Brazil to demonstrate that effective intellectual property protection helps countries develop economically).


6. Reglamento de la Ley sobre el Control y Registro de la Transferencia de Tecnologfa y el Uso y Explotacion de Patentes y Marcas, D.O. (Jan. 9, 1990) [hereinafter 1990 Transfer of Technology Regulations].

istration's economic plan. Thus, while the administration's past reforms have been dogged by constitutional concerns regarding the sweeping nature of the regulatory interpretations of the highly restrictive provisions of the Foreign Investment Law and Transfer of Technology Law, the Industrial Property Law solidly replaces the Law of Inventions and Trademarks of 1976 (Law of Inventions and Trademarks). In addition, and of perhaps equal importance to the enhanced protection of industrial property rights, the Industrial Property Law specifically repeals the Transfer of Technology Law and the Transfer of Technology Regulations of 1990 (Transfer of Technology Regulations), which regulated the licensing of most forms of industrial property and the provision of certain technical services. The congressional approval of the Industrial Property Law is significant because the Salinas administration has in one legislative undertaking erased the historically low regard accorded industrial property rights under both the Law of Inventions and Trademarks and the Transfer of Technology Law.

This article begins with an examination of the various substantive provisions of the Industrial Property Law affecting patents, utility models, industrial designs, industrial or trade secrets, and various commercial designations (including marks). After also noting the most significant reforms to Mexico's Copyright Law, part II considers the treatment of licensing and franchising under the Industrial Property Law in the wake of its repeal of the Transfer of Technology Law and the Transfer of Technology Regulations. Part III reviews the various enforcement measures provided under the Industrial Property Law and analyzes the effectiveness of these measures for providing genuine protection of industrial property rights. Part IV highlights the most important improvements to Mexico's industrial property regime set forth in the negotiated, but as yet unadopted, draft of NAFTA. Finally, the outlook for Mexican industrial property rights is considered.

I. Protection of Intellectual Property Rights

As previously noted, the Industrial Property Law, which was published on June 27, 1991, and became effective the following day, replaced the Law of Inventions and Trademarks. The Regulations to the Law of Inventions and Trademarks, however, continue in effect, "insofar as they are not contradictory to the [Indust-

8. It should be noted that with the apparently increasing power and influence of the Salinas administration, these constitutional concerns have been primarily reserved to legal commentators. See Note, The New Mexican Revolution, supra note 7, at 684 (noting that the 1989 Foreign Investment Regulations, supra note 5, strain constitutional and legal boundaries to their limits); see also John B. McKnight & Carlos Müggenburg, Mexico Redoubles Efforts to Attract Foreign Franchisors, 9 FRANCHISE L.J., Spring 1990, at 3 n.29 (pointing out concern among Mexican lawyers as to the constitutionality of certain provisions of the Transfer of Technology Regulations, supra note 6).


10. Industrial Property Law, supra note 1, art. 2.

trial Property Law), until new regulations are issued under the Industrial Property Law. Originally these new regulations were to be issued in late 1991. After additional delays, the issuance of the new regulations are now believed to be linked to progress on the adoption of NAFTA, and thus the regulations cannot be expected until at least early 1993. In the meantime, a considerable amount of uncertainty will continue to exist over the proper interpretation of a number of provisions of the Industrial Property Law.

A. PATENTS, UTILITY MODELS, AND INDUSTRIAL DESIGNS

An invention is patentable under the Industrial Property Law if it is novel, the result of inventive activity, and susceptible to industrial application. The Industrial Property Law specifically broadens the class of inventions that are immediately patentable in Mexico, some of which were simply not previously patentable in Mexico or would not have been eligible for patent protection until 1997. The Industrial Property Law specifically allows for immediate patent protection of certain chemicals, alloys, and living matter. The classes of living matter protected include:

1. plant varieties;
2. inventions related to microorganisms, such as those made by using them, inventions that are applied to microorganisms, or inventions that result therefrom. Included in this provision are all types of microorganisms, such as bacteria, fungi, algae, virus, microplasms, protozoan, and cells that do not reproduce sexually; and
3. biotechnological processes for obtaining pharmochemicals, medicines, foods and beverages for animal and human consumption, fertilizers, herbicides, fungicides, or products with a biological activity.

The following inventions relating to living matter are, however, expressly unpatentable:

1. Essentially biological processes for obtaining or reproducing plants, animals, or their varieties, including genetic processes or processes related to material capable of self-replication, by itself or by any other indirect manner, when the processes consist simply of selecting or isolat-

12. Industrial Property Law, supra note 1, art. 4.
13. Id. art. 15. The statutory definitions of "novelty," "inventive activity" and "industrial application" are set forth in article 12 of the Industrial Property Law. The Mexican standard for novelty relating to patents is particularly high, as an invention will be deemed to be within the public domain if it has become public through oral or written description, by exploitation, or by any other means of dissemination of information, in Mexico or abroad. Id. art. 12. However, disclosure of an invention for noncommercial purposes through any communications medium, or at a Mexican or international exhibition, will not alone cause an invention to be deemed to fall within the public domain so long as a patent application is filed within twelve months of any such disclosure. Id. art. 18.
14. Id. art. 20.
ing available biological material or leaving it to act under natural conditions;
(2) plant species and animal species and breeds;
(3) biological materials, as found in nature;
(4) genetic material; and
(5) inventions relating to the living matter that composes the human body.\footnote{15}

The extension of patent protection to the specified inventions involving living matter are especially noteworthy, as Mexico has for years suffered from a lack of many of the related pharmaceutical and agricultural chemical products that are commonplace in the industrial world. In recognition of this deficiency in its industrial property regime, the Mexican Congress in 1987 amended the Law of Inventions and Trademarks to provide that these types of inventions would become patentable in 1997.\footnote{16} The Industrial Property Law makes these inventions immediately patentable. It also provides that if a patent application for any such invention has been filed with a signatory to the Patent Cooperation Treaty and such invention has not been exploited in Mexico on a commercial scale, then a patent application filed with the Ministry of Commerce and Industrial Development (Ministry) within twelve months of the effective date of the Industrial Property Law (that is, June 28, 1992) would be given the priority date of the first application filed in any such country.\footnote{17} This provision is specifically devised to immediately entice pharmaceutical and agricultural companies to Mexico, many of which have been hesitant to distribute their products in Mexico in the past.

The term of a patent granted under the Industrial Property Law is changed from fourteen years after the date of grant of the patent to twenty years after the date of filing the patent application with the Ministry. At first blush this may seem to be a substantial improvement in the area of patent protection. Due to the historically lengthy period between the filing and granting of a patent, however, this change does not significantly alter the period of protection extended patents under Mexican law. This change does nevertheless assure protection from infringement during the period from filing the patent application to the granting of the patent. The patent term of pharmochemical and pharmaceutical products and processes can be extended for an additional three years, provided the patentee grants a license to work the patent to a Mexican-controlled company.\footnote{18}

As soon as possible after the expiration of an eighteen-month period following the date of filing of a patent application with the Ministry (or the date of priority

\footnotesize\textit{SPRING 1993}
given to an application), the Industrial Property Law requires public disclosure of the invention described in the application.\textsuperscript{19} Since the Industrial Property Law does not provide procedures for third-party opposition to a pending patent application, the publication requirement appears designed to alert Mexican industry to new technological developments. Subsequent to publication of the patent application, the Ministry carries out an examination of the merits of the invention, which may involve obtaining technical advice from other specialized governmental agencies.\textsuperscript{20} In addition, the Ministry may accept or require information from foreign patent examining offices and may also seek additional information from the applicant. The applicant must comply with any such request within two months or such extended period as the Ministry may grant.\textsuperscript{21} After finally determining whether the invention is patentable, the Ministry will issue letters patent (upon payment of the appropriate fees) or reject the application. In the event of rejection, the applicant may file a petition for reconsideration with the Ministry within thirty days.\textsuperscript{22} Should rejection of the patent application be confirmed, an \textit{amparo} suit may be filed with a federal district court, the decisions of which are subject to final review by the federal circuit courts.

While the Industrial Property Law significantly broadens the patent protection afforded inventions, it continues to suffer from provisions subjecting patentable inventions to compulsory licenses if the patent has not been worked in Mexico by the later of four years from the filing date of the patent application or three years from the date of granting the patent (unless failure to work the patent is justified for technical or economic reasons). A patentable invention is also subject to a compulsory license for public interest reasons where the production, supply, or distribution of basic commodities would otherwise be impeded.\textsuperscript{23} In addition, the Industrial Property Law falls short of providing patent protection for the full array of inventions typically protected in industrialized countries. For example, it fails to offer patent protection for computer programs, many biological substances used in plant and animal reproduction, and surgical, therapeutic, and diagnostic methods.\textsuperscript{24}

The Industrial Property Law introduces in Mexico the protection of utility models, which can be registered if (due to modifications to the structure, configuration, or form of goods, utensils, apparatus, or tools) new ways of using such

\begin{itemize}
\item \textsuperscript{19} \textit{Id.} art 52.
\item \textsuperscript{20} \textit{Id.} art 53.
\item \textsuperscript{21} \textit{Id.} arts. 54, 55, and 58.
\item \textsuperscript{22} \textit{Id.} art. 200.
\item \textsuperscript{23} \textit{Id.} arts. 70 and 77. It should be noted that these statutory provisions are derived from the Paris Convention, to which Mexico is a party.
\item \textsuperscript{24} Mariano Soni, Jr. & Gretchen A. Pemberton, \textit{Salinas Administration Takes a Step Forward}, \textit{L.A. Daily J.}, Aug. 22, 1991, at 7. As hereafter noted, software or computer programs are expressly granted copyright protection pursuant to the contemporaneous reforms made to Mexico's Copyright Law, \textit{supra} note 4. \textit{See infra} text accompanying notes 58--59.
\end{itemize}
items are developed or new functions are performable. This legal concept, which is recognized in a number of industrialized countries, is especially designed to induce industrial innovation among smaller companies and individuals that do not have the research and development resources that frequently are instrumental in developing patentable inventions. The stringency of the regulatory standards applicable to the registration of utility models are lower than those applicable to patents. Accordingly, the determination of novelty of a utility model is confined to Mexico, rather than the entire world. The term of protection afforded registration of a utility model is ten years from the application filing date.

Finally, the Industrial Property Law extends enhanced protection to industrial designs. Industrial designs that are capable of being registered include industrial drawings (unique combinations of figures, lines, or colors that are incorporated into an industrial product) and distinctive forms of product trade dress (referred to in the Industrial Property Law as three-dimensional industrial models). The breadth of protection afforded industrial designs under the Industrial Property Law is quantitatively increased by virtue of extending the registration term from seven to fifteen years. It is qualitatively enhanced by providing for the rejection of registration of industrial designs that are confusingly similar, rather than identical, to previously registered industrial designs in Mexico.

B. INDUSTRIAL OR TRADE SECRETS

Prior to the enactment of the Industrial Property Law, virtually no legal protection existed in Mexico for general industrial or trade secrets. The Industrial Property Law introduces protection of secrets having industrial applications relating to: (1) the nature, characteristics, or purposes of products; (2) the processes and production methods of products; and (3) the means and methods of marketing and distributing products or rendering services. In order to qualify for protection under the Industrial Property Law, a secret must: (1) be identified as a secret (whether expressly under an agreement or otherwise in a confidential

25. Industrial Property Law, supra note 1, art. 28.
27. Industrial Property Law, supra note 1, art. 12. While the lower novelty standards accorded utility models have the laudatory effect of motivating small Mexican inventors, they also have the effect of providing protection to Mexican pirates of utility models developed elsewhere.
28. Id. art. 32.
29. Id. art. 36.
30. Id. art. 31.
31. While the unauthorized disclosure of secrets obtained through an employment or related relationship that resulted in damages could lead to criminal prosecution, the severity of the punishment was so minimal that there was relatively little concern for laws prohibiting the unauthorized disclosure of trade secrets. See Codigo Penal para el Distrito Federal en Materia del Fuero Comun y para toda la Republica en Materia de Fuero Federal, D.O. (Aug. 14, 1931), arts. 210-211.
32. Industrial Property Law, supra note 1, art. 82.

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relationship); (2) provide a competitive or economic advantage over third parties in the marketplace; (3) be protected by the owner thereof through sufficient means or systems; and (4) be maintained and conveyed in documents, electronic or magnetic media, optical discs, microfilm, film, or other similar instruments. Of course an industrial or trade secret must not be within the public domain. A secret does not, however, fall into the public domain by virtue of its disclosure in connection with efforts to obtain licenses, permits, authorizations, registrations, or other official acts. This final provision underscores a significant concern about the confidentiality accorded certain governmental filings and is important in light of the potential breadth of the provisions in the Industrial Property Law requiring recordation of license and franchise agreements.

The extension of legal protection to industrial or trade secrets is clearly one of the most important aspects of the Industrial Property Law, as a very significant portion of the industrial property assets of most businesses may be classified as trade secrets. Nonetheless, this section of the Industrial Property Law has a number of shortcomings. The chief concern is what constitutes an industrial or trade secret qualifying for protection (for example, what is the significance of the requirement that the secret have an industrial application, and are all secrets relating to rendering services protected or are only those relating to the marketing or distribution of services?). In addition, in light of the subjective nature of several of the elements of proof required to support a statutory claim (for example, proving that the secret provides a competitive or economic advantage over third parties) and the current absence of any injunctive relief for unauthorized disclosures or uses of secrets, concern remains over the effectiveness of the statutory remedies provided by the Industrial Property Law.

C. COMMERCIAL DESIGNATIONS

1. Trademarks

The Industrial Property Law makes a number of notable improvements to the treatment of trademarks (and service marks) in Mexico. While these improvements are not monumental in their significance, when taken together they generally raise the substantive standards for handling marks in Mexico to a level commensurate with that in the industrialized world. Because trademarks can be used to designate products or services, tridimensional shapes and collective marks used by an association of producers, merchants, or purveyors of goods

33. Id. arts. 82, 83, and 85.
34. Id. art. 82.
35. See infra text accompanying note 73.
36. See infra text accompanying notes 109–12.
37. Industrial Property Law, supra note 1, art. 89. Under prior law, tridimensional shapes were registrable only if they were not yet part of the public domain. See Law of Inventions and Trademarks, supra note 8, art. 91.
38. Id. art. 96.
or services are now registrable. In addition, the Industrial Property Law now permits variations of registered marks to be used in commerce so long as the essential features remain. The law also provides for greater flexibility in permitting the registration of marks that may have descriptive characteristics.39

The actual procedure to register a mark under the Industrial Property Law is notably simple. The registration application need only identify the applicant, the mark sought, the date of first use of the mark (if it has been used at all), and the classes of products or services to which the mark will relate.40 As Mexico is a party to the Paris Convention, if the registration application is filed in Mexico within six months of the date of filing a registration application in one's home country, the filing date in the home country will be deemed the priority date in Mexico.41 A Mexican attorney normally handles the registration application of a foreign company. To properly evidence the authority of the Mexican attorney to act on behalf of a foreign registrant, a power of attorney42 is usually granted to the Mexican attorney. The Industrial Property Law appears to indicate that a power of attorney granted in accordance with the laws of the applicant's country or according to international treaty is now acceptable.43 However, in the near future the applicant is advised to continue the more traditional practice of granting a power of attorney through preparation of a notary public deed that also references the corporate existence of the registrant and the corporate authority of the officer executing the deed under the registrant's governing documents. In the United States, the deed needs to be notarized by a United States notary public and then submitted, along with governmental certification of the notary public's authority to act, to a Mexican consulate for legalization. While a registration application alone can be submitted to the Ministry in order to expediently secure a filing date for purposes of obtaining priority, eventually filing the aforementioned deed with samples of the mark and the applicable governmental fees will be necessary in order to complete the registrant's application package.

The Industrial Property Law increases the term of the registration of a trademark from five years to ten years.44 In addition, the length of the term is now measured from the date of filing the registration application, rather than the legal date provided for under prior law. This change should help to eliminate some confusion in determining the commencement date of the term of registration.

The process of renewing a registered trademark and demonstrating use of the

40. Industrial Property Law, supra note 1, art. 113.
41. Id. art. 117.
42. A properly prepared power of attorney should authorize the Mexican attorney to perform virtually all functions necessary in connection with the attorney's representation of the registrant's trademark, including trademark litigation and making all filings relating to any trademark licenses that are granted.
43. Industrial Property Law, supra note 1, art. 181.
44. Id. art. 110.
trademark is now considerably improved. Under the Industrial Property Law, the renewal application must be submitted within the six-month period preceding or succeeding the expiration date of the registration term. To demonstrate use of the trademark during such term, only submission of an affidavit stating that the use of the mark has not been interrupted for any period of three or more years during such term is necessary. This simplified procedure of matching the date of renewal with the date upon which use must be proven contrasts with the confusion generated under the prior scheme wherein use was required to be demonstrated within three years of the date of registration and submission of the renewal application was required within five years of the legal date. In addition, by expressly requiring submission of an affidavit rather than labels, sales invoices, and other evidences of use previously required, the process is streamlined and now relies upon an in-depth analysis of use only in the event the affidavit is later challenged by an interested party, instead of with each filing. Due to the possibility that an affidavit may be so challenged, trademark owners are well advised to retain evidence of use of the trademark in the event of such a challenge.

Finally, the Industrial Property Law contains several provisions designed to combat the piracy of foreign marks in Mexico. If marks are used and registered in a foreign country (having reciprocity with Mexico) prior to the filing in Mexico of an application to register such a mark by a party other than the foreign owner, the Mexican authorities are empowered under the Industrial Property Law to reject such application. In addition, in the event such a mark is successfully registered in Mexico, the foreign owner may seek to nullify such registration within one year of the publication date of the registration. In the case of a registration that was improperly granted due to false information contained in the application, or if the trademark is identical or confusingly similar to a registered mark or an unregistered mark used on the same or similar products or services, nullification may be sought within five years of the publication date of the registration. A nullification action may be brought at any time if a registered trademark was erroneously determined to meet the criteria for registration, or was wrongfully registered by the agent, representative, user, or distributor of the foreign holder of the mark.

2. Slogans

Slogans, which are defined under the Industrial Property Law as phrases or sentences whose purpose is to advertise to the public commercial, industrial, or

45. Id. art. 133.
46. Id. art. 134.
47. Villareal, supra note 26, at 23.
48. Id. at 22-23. While this statutory change should greatly reduce the administrative burden associated with verifying use of a mark, it is sure to result in increased litigation as disappointed applicants seek to demonstrate that the registered mark has not actually been used.
49. Industrial Property Law, supra note 1, art. 151.
50. Id.
service businesses, or products or services,\textsuperscript{51} can gain protection in Mexico only through registration with the Ministry. The protection afforded slogans under the Industrial Property Law is strengthened from a ten-year nonrenewable term to successively renewable ten-year terms.\textsuperscript{52} In the absence of a contrary provision, the provisions of the Industrial Property Law applicable to trademarks are also generally applicable to slogans. However, the Industrial Property Law provides no specific sanctions for slogan infringement.

3. \textit{Trade Names}

The exclusive right to use a trade name identifying a company or industrial, commercial, or service establishment is provided for under the Industrial Property Law, without the need to publish or register the trade name. This protection extends only to the geographic area of the actual clientele of such company or establishment, but can apply throughout Mexico if "a massive and constant dissemination (of the trade name) at the national level occurs."\textsuperscript{53} The user of a trade name may also seek publication of the trade name in the Ministry's quarterly Gazette, effectively establishing for a ten-year renewable term from the publication filing date a strong presumption in the adoption and use of the trade name in the designated area.\textsuperscript{54} An application for publication of a trade name must be accompanied by evidence of use. Trade names are generally governed under the Industrial Property Law in all applicable respects by the provisions applicable to trademarks.

4. \textit{Appellations of Origin}

An appellation of origin is the name of a geographic region used to designate a product originating there wherein the qualities or characteristics of such product are based exclusively on that geographic environment (which may be due to natural or human factors). A declaration of protection of an appellation of origin may be made ex officio by the Ministry or at the request of a party with a legal interest therein. In the event that a declaration of origin is sought for an appellation of origin, the Ministry will publish an abstract of the appellation of origin in the Official Federal Journal and allow a public commentary period of two months. The Ministry thereafter determines whether to issue a declaration of protection for the appellation of origin. If the Ministry issues such a declaration, the Mexican federal government will be the holder thereof. The duration of declaration will continue so long as the conditions giving rise to the grant of the declaration of protection continue to exist.\textsuperscript{55}

\textsuperscript{51. Id. art. 100.}
\textsuperscript{52. Id. art. 103.}
\textsuperscript{53. Id. art. 105.}
\textsuperscript{54. Id. arts. 106 and 110.}
\textsuperscript{55. Id. arts. 156-168.}
The Ministry will grant an authorization to use an appellation of origin to anyone who: (1) is directly engaged in the extraction, production, or preparation of products protected by the appellation of origin; (2) performs the foregoing activities within the territory set forth in the declaration; and (3) complies with the standards established by the Ministry with respect to the products in question. An authorization has a ten-year renewable term. In addition, an authorized user may permit distributors and retailers of its products to use the appellation of origin only if the related agreement with the the distributor or retailer is approved and recorded with the Ministry.  

D. COPYRIGHT REFORMS

In a companion piece of legislation to the Industrial Property Law, the Mexican Congress passed comprehensive reforms to its Copyright Law on July 17, 1991. The most important of these reforms extends copyright protection to software programs for a term of at least fifty years. Regardless of whether a software program is registered with the Copyright Bureau, a software owner is now entitled to identify itself as the sole legitimate source of the software and to take action against anyone effecting changes in the software or making total or partial unauthorized reproductions. In addition, sound recordings, which were not previously expressly protected under Mexican copyright law, are granted specific copyright protection for a term of at least fifty years. As a consequence, the producers of sound recordings will have greater legal control over the reproduction and distribution of their sound recordings in Mexico.

The Copyright Law sets forth general procedures for civil redress in the event of copyright infringement. A civil action may be initiated in a federal court or, if neither public policy issues are involved nor criminal sanctions sought, in state court. The Copyright Law contains provisions for injunctive relief (court precautionary measures) and also for damages. The minimum amount that may be awarded is equal to 40 percent of the revenues derived from the sale of the infringing products.

Unfortunately, while the Mexican Congress upgraded criminal sanctions for copyright infringement, the sanctions remain significantly flawed and may be of questionable practical value to the copyright owner. Criminal prosecution for copyright infringement requires proof that the infringer acted with the intent of obtaining profit from the illegal activities. While an unrelated provision of the

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56. Id. arts. 169-178.
57. See Decreto por el que se Reforman y Adicionan Diversas Disposiciones de la Ley de Derechos de Autor, D.O. (July 17, 1991).
58. It is generally recommended that copyrightable works be registered with the Copyright Bureau in order to support the position that the work qualifies for copyright protection.
59. Copyright Law, supra note 3, arts. 145, 146, and 156.
60. Industrial Property Law, supra note 1, arts. 135 and 137.
Copyright Law defines "profit" as "direct or indirect economic benefit," the provisions setting forth criminal sanctions fail to define what constitutes "profitable intent." This lack of guidance in the Copyright Law may well create a substantial obstacle to prosecuting copyright infringement actions, particularly in light of provisions in the Mexican Constitution that prohibit the imposition of criminal sanctions where the legal standards for applying such sanctions are unclear.

II. Licensing and Franchising

A. Retrospective on the Regulation of the Transfer of Technology

As previously noted, the Industrial Property Law repeals the Transfer of Technology Law of 1982 and the Transfer of Technology Regulations of 1990. The Transfer of Technology Law of 1982, which built upon the restrictive policies embodied in the Transfer of Technology Law of 1972, heavily regulated transfers of various technologies (or forms of industrial property) into Mexico, including patent licenses, industrial model or drawing licenses, trademark and trade name licenses, transfers of know-how, technical assistance, computer programs, certain copyright licenses, and the provision of operational, management, advisory, consulting, and supervisory services. Mexico's regulation of transfers of technology during the 1970s and 1980s, like the substandard protections afforded industrial property rights under the Law of Inventions and Trademarks, was philosophically based upon the premise that proprietary rights to ideas or concepts were illegitimate or overreaching and that technology was the heritage of all mankind. At a more practical level, however, the Mexican Government perceived a need to regulate transfers of technology into Mexico to: (1) support the development of internally developed technologies and an export market; (2) decrease the amount of foreign exchange spent on importing technology; and (3) augment the bargaining position of the Mexican transferee who, it was be-
lieved, was forced to pay exorbitant royalties. To achieve these objectives, the Transfer of Technology Law required the registration of technology transfer agreements and set forth a number of specific grounds for the denial of registration of such agreements. As a consequence, relatively few producers of technology chose to transfer their technologies to Mexico. Those that did so frequently found themselves renegotiating the terms of their private agreements with the Mexican Government.

The Transfer of Technology Regulations promulgated in 1990 substantially liberalized the procedures for transferring technology to Mexico and, as a consequence, the Ministry almost immediately experienced a flood of applications. Nevertheless, the Transfer of Technology Law remained in place and continued to have a chilling effect upon cautious investors and producers of technology who remained concerned about the permanence of regulatory change in Mexico. Based upon President Salinas's growing political influence, the passage of the Industrial Property Law reveals the Transfer of Technology Regulations to be only an interim measure in a continuing effort to obtain permanent change in the treatment of transfers of technology to Mexico. Its passage also reflects the recognition by the Mexican Government that Mexico's competitive position in the world is best enhanced through the removal of barriers to the free flow of technology.

B. Patent and Trademark Licensing

The Industrial Property Law completely revamps the legal treatment of transfers of technology to Mexico and, while it does not eliminate all legal barriers to technology transfers, it appears to reduce these barriers to minimum levels. First, the regulatory scope of the Industrial Property Law is limited to requiring the recordation of patent and trademark licenses and transfers (including licenses and transfers relating to the registration thereof) only, and does not extend to the other types of technology transfer agreements that were previously regulated. Also, while failure to register a technology transfer agreement under the Transfer of Technology Law resulted in the imposition of fines and the agreement being deemed null and void, the primary purpose of recording a patent or trademark

66. Hyde, supra note 64, § 30.02, at 30–34; see also Enrique A. Gonzalez & Joyce G. Mazero, Franchising in Mexico: Breaking with Tradition, 7 Franchise L.J., Summer 1987, at 3 (also suggesting that regulating the transfer of technology would increase both the quantity and the quality of the flow of technology to Mexico).

67. During the twelve-month period following the promulgation of the Transfer of Technology Regulations, the number of franchise agreements submitted for registration doubled in comparison with the entire period prior to that time. Roberto G. Villareal, Address Before the U.S.-Mexico Chamber of Commerce (Southwest Chapter), Third Annual Trade and Investment Conference (Feb. 5, 1991), in Dallas, Texas.

68. Villareal, supra note 26, at 33–36.

license or transfer agreement with the Ministry is to render the transfer of rights thereunder enforceable against third parties.\(^7^0\)

The application to record a license must be submitted to the Ministry in accordance with the regulations to the Industrial Property Law.\(^7^1\) As previously noted, the transitional provisions of the Industrial Property Law provide that until new regulations are prepared, the existing regulations relating to the Law of Inventions and Trademarks will apply. Since the Law of Inventions and Trademarks did not generally address the licensing of industrial property rights, no definitive regulatory criteria exist indicating what form of application must be submitted to the Ministry. Nor is it clear whether it is necessary to submit a copy of the license agreement or whether a simple writ setting forth certain basic information regarding the license agreement will suffice. In keeping with the economic policies underlying the Industrial Property Law, it is hoped that the regulations will permit the filing of a writ so as to avoid public disclosure of the terms of the license agreement.\(^7^2\)

In contrast to the numerous grounds for denial of registration of a technology transfer agreement under the Transfer of Technology Law, the Industrial Property Law provides that a license agreement will be recorded unless by its terms the applicability of the Industrial Property Law is excluded.\(^7^3\) In addition, recordation of a patent license can be denied if the patent or registration has lapsed or if its duration is longer than the term of the patent or registration.\(^7^4\) The Industrial Property Law also specifically provides that recordation of trademark licenses (and, as discussed below, franchise agreements) can be denied "for reasons of the public interest."\(^7^5\) Obviously, the breadth of this provision is of great interest to all parties concerned with the permanence of change in Mexico and particularly to those who have witnessed bureaucratic determinations based on political influence and other nonmeritorious factors. This concern is somewhat mitigated by the requirement that the Ministry state the reasons and legal grounds for rejection of an application to register a trademark license.\(^7^6\) However, this requirement seems oddly out of place in a law designed to foster the free flow of technology, and presumably reflects the need to make political concessions to isolationist factions within the Mexican Congress. In any event, the recordation of licenses is understood to be more a filing formality than a merit review. Assuming that

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\(^{70}\) Industrial Property Law, \textit{supra} note 1, arts. 62, 63, 136, and 143.

\(^{71}\) \textit{Id.} arts. 64 and 137.

\(^{72}\) The Industrial Property Law permits public inspection of materials filed with the Ministry once registration is granted or a license or franchise agreement is recorded. \textit{Id.} art. 185.

\(^{73}\) \textit{Id.} arts. 66 and 150. A choice of law provision set forth in a license agreement must, therefore, at least provide that with respect to those provisions in the license agreement substantively addressed by the Industrial Property Law, that the Industrial Property Law shall control. The Industrial Property Law does not limit the ability of the parties to agree to submit a dispute to international arbitration.

\(^{74}\) \textit{Id.} art. 66.

\(^{75}\) \textit{Id.} art. 150.

\(^{76}\) \textit{Id.}
this provision does not provide the basis for substantial regulatory interference in the transfer of technology to Mexico, the substitution of these recordation standards for those set forth in the Transfer of Technology Law should return to the parties to a license agreement the freedom to contract unhindered by government intervention.

The remainder of the provisions relating to licenses in the Industrial Property Law are fairly abbreviated, reflecting the expressed policy of deregulation. The working of a patent by a licensee and the use of a trademark by a licensee will constitute use by the patent or trademark owner, as the case may be, so long as the related license is recorded.77 In addition, if a patent or trademark license is recorded with the Ministry, the Industrial Property Law empowers the licensee, absent an agreement to the contrary, to take legal action to protect such industrial property rights as if it were the owner thereof.78 The Industrial Property Law requires that a trademark licensee produce products or render services of the same quality as are produced or rendered by the owner of the mark.79 Finally, the recordation of a license may in general be canceled only by a court order or at the joint request of the licensor and licensee. (As a terminated licensee may be less than wholly cooperative, the licensor is well advised to obtain agreement in advance with the licensee upon mechanisms to ensure the prompt cancellation of the license.) Of course, a patent license will terminate upon the nullity or lapsing of the related patent, and a trademark license will terminate in the event the trademark registration is canceled by virtue of the trademark becoming a generic designation for the related product or service.80

C. Parallel Imports

The exponentially increasing volume of trade between the United States and Mexico warrants an examination of the treatment of the problem of parallel imports under the Industrial Property Law. The problem of parallel imports arises where the owner of a species of rights (for example, a patent or trademark) in one country grants a license to a party in another country for the use of such rights, and related products are subsequently transported from one country to the other. The Industrial Property Law grants protection to any person who trades with, distributes, acquires, or uses the products in question, after such products have been "legally introduced into trade."81 Thus, the foregoing specified persons are protected from legal action being taken against them under the Industrial Property Law in connection with the importation and distribution of certain products, so long as such products were "legally introduced into trade." While the

77. Id. arts. 69 and 141.
78. Id. arts. 68 and 140.
79. Id. art. 139.
80. Id. arts. 65, 138, and 153.
81. Id. arts. 22 and 92.
proper interpretation of this statutory phrase is admittedly open for discussion, the authors believe that the Industrial Property Law provides the legal holder or licensee of rights in Mexico with the basis to take action against the illegitimate introduction into the Mexican market of products produced outside of Mexico, where legitimacy is based upon the legal authority of the manufacturer and distributor to handle such products. Thus, the legal holder or licensee of rights in Mexico would not, absent a provision to the contrary in a license agreement, be able to take action against the direct sales of products into Mexico by a foreign legal holder or licensee, or the indirect sale of products into Mexico by an authorized distributor. The Mexican holder or licensee of rights, however, should be able to take action under the Industrial Property Law to prevent the importation of products produced or distributed by an unauthorized party.

D. FRANCHISING

The sale of a franchise in Mexico has historically been treated as a transfer of technology and was therefore subject to the Transfer of Technology Law. Franchising was first explicitly recognized as a method of doing business under Mexican law in the Transfer of Technology Regulations, which introduced a number of provisions designed to encourage the development of franchising in Mexico. The Industrial Property Law defines a franchise similarly to the definition set forth in the Transfer of Technology Regulations:

A franchise will exist when, with the license of a mark, technical knowledge is transmitted or technical assistance is provided, allowing the person to whom it is granted to produce or sell products or render services uniformly and with the operational, commercial and administrative methods established by the holder of the mark, for the purpose of preserving the quality, prestige and image of the products or services distinguished by the mark.82

Pursuant to the Industrial Property Law, a franchise must be recorded with the Ministry pursuant to the same provisions, and with the same effect, as the recordation of a trademark license.83 Unfortunately, the ambiguities under the Industrial Property Law regarding the method of recording trademark license agreements are further exacerbated in the case of franchise agreements. Whether it is necessary to submit a copy of the franchise agreement for recordation, submit a copy of the franchise agreement only if it contains a trademark license, or simply file a writ is not clear.

While the transitional provisions of the Industrial Property Law do not address the treatment of license or franchise agreements that were registered or submitted for registration under the Transfer of Technology Law (whether pursuant to article 53 of the Transfer of Technology Regulations or otherwise), the authors understand that any such agreement will be treated as recorded for purposes of

82. Id. art. 142.
83. Id.
the Industrial Property Law. With respect to model franchise agreements submitted for registration pursuant to article 54 of the Transfer of Technology Regulations, it will, however, be necessary to record any subsequently executed forms of franchise agreements under the Industrial Property Law.  

Of great concern to franchise legal practitioners is a passing reference in the Industrial Property Law to the need to regulate the sale of franchises in Mexico through franchise disclosure requirements. The legislation requires that presale disclosure relating to the "status of the franchisor's business" be made to the prospective franchisee in accordance with the terms of the regulations to the Industrial Property Law. Although some unofficial indications have surfaced that minimal disclosure requirements are contemplated, this matter will not be settled until such regulations are published. In the meantime, those selling franchises in Mexico have little guidance as to what disclosure, if any, need be made.

With the general deregulation of the licensing and franchising fields brought about by the repeal of the Transfer of Technology Law and Regulations, legal advisors must shift their attention from a regulatory analysis to more traditional business and legal issues. This role implies greater creativity on the legal advisor's part in handling tax, operational, industrial property, and dispute resolution issues. In addition, the applicability of civil and mercantile laws to the underlying transaction will need to be more carefully considered. Finally, attorneys representing franchisors must develop expertise in advising their clients regarding presale disclosure issues.

III. Infringement and Enforcement

The Industrial Property Law couples its improved protection of industrial property rights with additional enforcement measures. These measures include several new causes of action for infringement and provisions for the conduct of on-site inspections where infringing goods are suspected to exist. In addition, administrative and judicial procedures are improved with the objective of providing more effective enforcement of industrial property rights. An analysis of these enforcement measures first turns to the two categories of legal actions provided for under the Industrial Property Law: administrative infringements and criminal offenses. The article then reviews the framework for conducting patent nullity and trademark cancellation proceedings. Finally, the authors consider the effectiveness of these several enforcement measures.

84. For an analysis of the treatment of franchising under the Transfer of Technology Law and Transfer of Technology Regulations, see McKnight & Müggenburg, supra note 8.

85. Industrial Property Law, supra note 1, art. 142.

A. Administrative Infringements

The Industrial Property Law specifically sets forth numerous actionable administrative infringements that include, in general, (1) unfair competition matters, (2) most trademark matters (although actions for an infringing use of the exact trademark, rather than a similar trademark, are generally criminal offenses), (3) most slogan and trade name matters, and (4) all other violations of the Industrial Property Law that do not constitute criminal offenses. For example, one of the most common causes of action that would be classified as an administrative infringement would be a proceeding brought in response to an unauthorized party's use of a trademark that is similar to, although not the same as, that registered by another for the same or similar goods or services.

An administrative infringement can be initiated ex officio or at the request of an interested party by submitting a petition to the Ministry. The Ministry may then conduct, if the nature of the alleged infringement so warrants, an inspection. If any bona fide infringing goods are found, the Ministry may seize and hold such goods as a precautionary measure. The alleged infringer is then given an opportunity to respond to the petition, and the Ministry will issue its resolution of the matter based upon the evidence before it. If the Ministry finds an administrative infringement, it may: (1) fine the infringer (up to approximately $43,000, and up to approximately $2,200 for each day that the infringement persists); (2) temporarily or permanently shut down the infringing business; or (3) imprison the infringer for up to thirty-six hours. However, the resolution of the Ministry may be appealed by means of an amparo proceeding to a federal district court, and from there to a federal circuit court. The implementation of the foregoing sanctions may be delayed until a final, unappealable resolution is entered.

B. Criminal Offenses

The Industrial Property Law lists a multitude of criminal offenses, which may roughly be categorized to include: (1) patent, utility model, and industrial design matters; (2) trade secret matters; (3) appellation of origin matters; and (4) trademark matters that are generally more egregious than those treated as administrative infringements (including the unauthorized use of a registered mark).

A criminal proceeding may be sought by filing a petition for indictment with

87. Industrial Property Law, supra note 1, art. 213.
88. Id. art. 215.
89. Id. art. 211. While the alleged infringer may, in theory, seek to block such a seizure with an amparo proceeding, it is unlikely that an alleged infringer will be given advance notice of the inspection and, hence, the opportunity to initiate such a proceeding.
90. Id. art. 217.
91. Id. art. 214. The calculation of the fine in U.S. dollars is based upon the exchange rate and general minimum wage prevailing in Mexico, D.F., in January 1992.
92. Id. art. 223.
the federal prosecutor, which may include a request for inspection and seizure of the allegedly infringing goods. Before the federal prosecutor can initiate a criminal proceeding, however, he is required to seek a technical opinion from the Ministry, which, while not further explained under the Industrial Property Law, presumably addresses the merits of the petition under the Industrial Property Law. This opinion is required so that the technical knowledge of the Ministry can be applied at an early date to assist the federal prosecutor in determining whether the alleged infringement justifies instituting criminal proceedings. In practice, attorneys in Mexico frequently seek to expedite this process by delivering directly to the Ministry the request for a technical opinion, and also the request for inspection and seizure of the allegedly infringing goods as the Ministry is alone empowered to conduct such inspections and seizures.

If the federal prosecutor decides to instigate criminal proceedings, which will in all likelihood be largely determined by the technical opinion, the case will be submitted to a federal criminal court. That court will hear all evidence presented and render its resolution of the matter. The result can be a sentence of up to six years in prison and a fine of up to approximately $43,000. The resolution of the federal criminal court is appealable to the federal circuit courts.

The foregoing actions for administrative infringements and criminal offenses are in addition to any civil action for damages that may be brought by an aggrieved party. Civil actions will, however, frequently be brought contemporaneously with the initiation of administrative or criminal proceedings, and such proceedings may provide the alleged infringer with the opportunity to raise procedural impediments to the continued prosecution of the related civil action. Given the slowness of the Mexican legal system and the fact that damage awards in Mexico are considerably smaller than in the United States, the incentives for seeking civil damages for an infringement may not be as attractive to holders of industrial property rights in Mexico as in other jurisdictions.

C. NULLITY AND CANCELLATION PROCEEDINGS

An interested party may seek a declaration of nullity of a patent (or a utility model or industrial design) or the related registration by filing a petition with the
Ministry. A declaration of nullity may be sought on the basis that the patent was improperly granted, or that the pending registration should not be granted. In any event, it must be brought within five years of the date of publication of the patent or registration. Since Mexico provides patent protection to inventions on the basis of the “first to file” rule, rather than the U.S. practice of the “first to invent,” the most common position advanced is that the patent should be annulled because it lacks novelty. Declarations of nullity are frequently submitted as a defense to a criminal proceeding instituted by a patent holder. This defense can be very effective because, under the Mexican legal system, the criminal proceedings may not be continued until the nullity proceedings are completed.

An interested party may seek the cancellation of a trademark (or a slogan or trade name) by filing a petition with the Ministry alleging: (1) prior use in Mexico of the mark or a confusingly similar mark; (2) under certain circumstances, prior use and registration abroad; (3) bad faith on the part of the agent, representative, user, or distributor of the holder of a mark registered abroad; or (4) the improper granting of the registration. Proper documentation supporting the allegations must accompany a petition for nullity of a patent or cancellation of a trademark. The holder of the patent or trademark is given the opportunity to answer the allegations, and the Ministry then issues a resolution of the matter. This resolution can be appealed to the federal district courts, and then to the federal circuit courts.

D. ASSESSMENT OF THE ADEQUACY OF ENFORCEMENT MEASURES

The foregoing enforcement measures reflect an increasing respect accorded to industrial property rights in Mexico. The underlying concern among foreign investors and holders of technology, however, is whether these enforcement measures will be efficiently and effectively implemented. Not only is there concern over whether the administrative infringements and criminal offenses outlined above will be handled expeditiously by the relevant tribunals, but also whether sufficient monies will be allocated to fund the efforts of the Ministry (and eventually the Mexican Industrial Property Institute) and federal prosecutor to carry out on-site inspections and prosecutions of infringements. Ultimately, Mexico’s success in attracting foreign investment and technology may be determined by these types of enforcement issues. As noted below, the NAFTA provisions dealing
with various enforcement measures provide further support for the hope that industrial property rights will be effectively protected in Mexico in the future.

IV. North American Free Trade Agreement (NAFTA)

The intellectual property chapter of NAFTA starts by stating that the basic objective of NAFTA shall be to require that each nation that is a party thereto (Party) "shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade." This laudable goal of removing the barriers to trade traditionally resulting from the territorial nature of intellectual property laws is achieved through a number of specific provisions designed to ensure that certain minimum standards relating to the treatment of intellectual property rights in Mexico, Canada, and the United States are met. In fact, the intellectual property provisions of NAFTA, if adopted, will cure a number of the flaws in Mexico's current intellectual property regime that unintentionally, or by strategic design, remain after passage of the Industrial Property Law and the recent reforms to the Copyright Law.

The most important improvements to the protection of intellectual property rights in Mexico that will be effected by the adoption of NAFTA include the following:

- Software programs will obtain much greater protection, as they will qualify as "literary works" under the Berne Convention for the Protection of Literary and Artistic Works (1971) (to which each of the Parties agreed to accede). The cable television industry will be given greater protection, as it will be a criminal offense to manufacture, import, sell, lease, or otherwise make available a device or system used in decoding encrypted program-carrying satellite signals without the proper authorization. Additionally, it will be a civil offense to receive or further distribute such signals that have been decoded without the proper authorization.

- In seeking cancellation of a trademark registration in Mexico on the basis that the trademark in question is already well known abroad, it will only be necessary to prove that the trademark is well known in the sector of the public that normally deals with the relevant goods or services, rather than well known by the public at large.

- Where the subject matter of a patent is a process for manufacturing a product, in certain patent infringement proceedings the defendant shall have the bur-

103. NAFTA, supra note 2, art. 1701(1).
104. Id. art. 1705(1)(a).
105. Id. art. 1707.
106. Id. art. 1708(6).
den of establishing that the allegedly infringing product was manufactured by a process other than the patented process.\footnote{107}

- Mexico, which currently provides no intellectual property protection for semiconductor integrated circuits, will henceforth provide protection in accordance with certain provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (1989).\footnote{108}

In addition to improvements in the protection of intellectual property rights, NAFTA also emphasizes the availability of enforcement measures, and specifically provides that "each Party shall ensure that enforcement procedures . . . are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights . . . including expeditious remedies to prevent infringements and remedies to deter further infringements."\footnote{109} While NAFTA addresses a number of specific procedural and remedial aspects of civil and administrative proceedings that will benefit owners of intellectual property, the key thrust of NAFTA is to provide for equitable remedies similar to injunctions granted by U.S. courts.

Mexican tribunals have historically refused to grant requests for pretrial equitable remedies due to their limited stated authority to do so, the imposition on the injured party of unrealistic conditions to the granting of such requests, and a general discomfort with equitable forms of relief.\footnote{110} In recognition of the irreparable damage that can result from the infringement of intellectual property rights, NAFTA requires that "each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures: (a) to prevent an infringement . . . and (b) to preserve relevant evidence in regard to the alleged infringement."\footnote{111} After determining that the complainant's rights are being infringed or that infringement is imminent, a judicial authority need only determine that "any delay in the issuance of [a provisional measure] is likely to cause irreparable harm to the [complainant], or there is a demonstrable risk of evidence being destroyed"\footnote{112} in order to grant a provisional measure.

As noted above, Mexico's historic reluctance to grant interim equitable relief has been a matter of great concern to foreign owners of technology. The emphasis accorded such forms of relief in NAFTA is certainly a welcome development, and it is hoped that if NAFTA is adopted the Mexican implementing legislation and courts will carry into effect its provisions. If these events come to pass, a critical step will have been taken to assure foreign owners of technology that their technologies will be effectively protected in Mexico.

\footnotesize{107. Id. art. 1709(11).  
108. Id. art. 1710(1).  
109. Id. art. 1714(1).  
111. NAFTA, supra note 2, art. 1716(1).  
112. Id. art. 1716(2)(c).}

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V. Conclusion

The passage of the Industrial Property Law reflects the recent successes of Mexico's new economic policies. Building on the regulatory reforms to the Foreign Investment Law and the Transfer of Technology Law, the Salinas administration has taken a substantial step toward gaining the confidence of the investment community by enacting the Industrial Property Law. The substantive standards set forth in the Industrial Property Law are generally comparable to the industrial property systems of the industrialized world. Nevertheless, the Industrial Property Law does contain some flaws, and concerns remain regarding the government's ability and political will to protect industrial property rights effectively.

Given President Salinas's current high standing in Mexico and the success of his economic policies, the opportunity to address these problems is clearly present. First and foremost, the adoption of NAFTA offers the greatest opportunity to cure a number of the most significant flaws in the Industrial Property Law and cement Mexico's commitment to the effective protection of intellectual property rights. Second, the regulations to the Industrial Property Law are due shortly and may take strides toward curing a number of ambiguities present in the Industrial Property Law. Finally, regardless of whether NAFTA is adopted, the Salinas administration, in cooperation with the Mexican Congress, may simply continue to reform its laws unilaterally and attract ever-increasing amounts of capital and technology.