CHAPTER V PROTECTION CONFERRED BY PATENT
SECTION I – RIGHTS

Article 42 - A patent shall afford to its owner the right to prevent others from producing, using, offering for sale or importing for such purposes without his consent:

I. a product that is the subject matter of a patent

II. the process or product directly obtained by a patented process

Paragraph 1 - The owner of a patent shall further enjoy the right to prevent others from assisting other parties in carrying out the acts referred to in this Article

Paragraph 2 - The rights in a process patent shall be deemed to have been infringed, insofar as item II is concerned, if the holder or owner of a product fails to prove, by a specific judicial ruling, that his product was obtained by a manufacturing process different from the process protected by the patent.
Article 43 - The provisions of the previous article shall not apply:

I - to acts carried out privately and without commercial purposes by unauthorized third parties, provided that these acts do not prejudice the economic interests of the patent owner.

II - to acts carried out by unauthorized third parties for experimental purposes, if related to studies or scientific or technological researches.

III - to the preparation of a medicine in accordance with a medical prescription in individual cases, and carried out by a qualified professional, or the medicine thus prepared.

IV - to a product manufactured in accordance with a process or product patent that has been placed on the internal market directly by the patent holder or with his consent.

V - to other persons who, in the case of patents related to living matter, use the patented product, without economic purpose, as an initial source of variation or propagation in order to obtain other products, and

VI - other persons who, in case of patents related to living matter, use, place in circulation, or market a patented product that has been lawfully placed on the market by the owner of the patent or his licensee, provided that the patented product is not used for the commercial multiplication or propagation of the living matter concerned.
SECTION III - COMPULSORY LICENSES

Article 68 - The patent owner shall be subject to compulsory licensing of his patent if he exercises his rights therein in an abusive manner or if he uses it to abuse economic power according to the law in force, under the terms of an administrative or judicial decision.

Paragraph 1 - The following may also be grounds for a compulsory licensing:

I. failure to exploit the object of the patent within the Brazilian territory for failure to manufacture the product or failure to fully use a patented process, except in case of economic unfeasibility, in which case importing shall be admitted; or

II. marketing that does not satisfy the needs of the market.

Paragraph 2 - A license may be requested only by a party having a legitimate interest and having the technical and economic capability to effectively exploit the subject matter of the patent for the purposes predominantly of the internal market, in which case the exception contained in item I of the previous paragraph shall not apply.

Paragraph 3 - If a compulsory license is granted on the grounds of abuse of economic power, a period of time, limited by provisions of art 74, shall be secured to a licensee to import the subject matter of the license, provided it has been placed on the market directly by the patent owner or with his consent.

Paragraph 4 - In the event of an import to exploit a patent or import as provided for in the preceding paragraph, third parties shall also be allowed to import a product manufactured according to a process patent or a product patent, provided that it has been placed on the market by the patent owner or with his consent.

Paragraph 5 - A compulsory license under Paragraph 1 may only be requested 3 (three) years after patent grant.
Article 69 - A compulsory license shall not be granted if, on the date of the request, the patent owner:

I - justifies failure to use for legitimate reasons;

II - proves that serious and effective preparations for exploitation have been made;

III - justifies the failure to manufacture or to market on grounds of legal obstacles;

.................................................................

Article 71 - In cases of national emergency or of public interest, declared in a specific decision of the Federal Government, provided that the patent owner or his licensee do not satisfy such need, a temporary non-exclusive compulsory license to exploit the patent may be granted ex officio without prejudice of the rights of the owner of the patent.

Sole Paragraph - The instrument granting the license shall set out its term of validity and the possibility of extension.

.................................................................

Article 74 - Unless he has legitimate reasons, the licensee shall begin exploiting the subject matter of the patent within a period 1 (one) year as from the grant of the license, and an interruption for a similar period of time shall be permitted.

.................................................................

.................................................................

.................................................................
TITLE VIII - TRANSITIONAL AND FINAL PROVISIONS

Article 230 - An application for a patent may be filed with regard to substances, matter or products obtained by chemical means or processes and foodstuffs and chemical-pharmaceutical substances, matter, compounds or products, and medicines of any kind, and the respective process for obtaining or modifying them by the person who holds protection afforded under a treaty or convention in force in Brazil, and with respect to which the date of the initial foreign filing is recognized, provided that its subject matter has still not been placed on any market, by a direct initiative of the owner or by another party with the consent of the owner, nor have serious and effective preparations for exploiting the subject matter of the application or patent been made in the Country by other parties.

Paragraph 1 - Applications shall be filed within a period of 1 (one) year as from the date of publication of this Law, and shall state the date of the initial application filed abroad.

Paragraph 2 - Applications for patent filed in accordance with to the provisions of this Article shall be automatically published, and the interested parties shall have the right to submit comments within 90 (ninety) days, on whether the aforementioned conditions of this Article have been complied with.

Paragraph 3 - Once provisions of articles 10 and 18 of this Law and the provisions of this Article have been complied with and grant of a patent in the country of first application has been proven, a patent shall be granted in Brazil in exactly the same terms as granted in the country of origin.
Paragraph 4 - A patent granted on the basis of this Article shall enjoy the remaining term of protection in the country of first application beginning with the date of filing in Brazil and limited to the term of protection laid down in Article 40, and the provisions of the sole Paragraph of that article shall not apply.

Paragraph 5 - An applicant who has filed an application that is pending with respect to substances, matter or products obtained by chemical means or processes and foodstuffs and chemical-pharmaceutical substances, matter, compounds and medicines of any kind, as well as the corresponding processes for obtaining or modifying them, may file a new application within the period of time and under the provisions of this Article, submitting proof of relinquishment of the pending application.

Paragraph 6 - The provisions of this Law shall apply, where appropriate, to applications filed and to patents granted in accordance with the provisions of this Article.