

Legal framework for industrial property protection and its importance for regional development in Mexico: Challenges and perspectives

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Introduction of the research:

Legal framework for industrial property protection and its importance for regional development in Mexico: Challenges and perspectives

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Brief reflection of Latin American law

As economic globalization deepens, the world economy is increasingly connected through trade, investment, and/or economic cooperation. In parallel with this movement, the study of laws of the countries with which we have trade is developed. In particular, we seek to understand the society or culture of developing countries through the study of laws. This is because, taking into account that law is a socio-cultural expression (Noda, 1979), if we do not correctly identify or understand the real situation or the role of the legal systems of underdeveloped countries in order to promote economic cooperation and commercial transactions, economic and social tension could be provoked.

Mexico, its legal regime will be observed later, is a part of Latin America. The word "Latin American law" is often used, which does not mean that there is a unification of law throughout Latin America and there is a legal system called Latin American law. The term "Latin American Law" is a general denomination of the

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laws that are in force in Latin America including Mexico.

Latin America was the colony of Western countries from the 15th century onwards. Most of the Latin American countries were conquered by Spain, and the laws of the mother countries or the ones that were enacted especially for the colonies were applied. In the beginning of the 19th century, most Latin American countries became independent and then the codification began, and the main codes were perfected until the end of the same century. The sources of codification were the laws applied in the colonization, the laws of the maternal and other European countries. In addition, the influence of the law of the United States of America, that borders on Latin America, was observed. In this sense, the Latin American countries have the common element, at least, with respect to the written laws (Okabe, 2005: pp. 131-142).

Previously I approached the issue of the importance of Latin American Law study (Okabe, 2004, pp. 13-32, Okabe, 2012: pp. 5-14). We will make brief observation of the meaning of the study on Latin American law and then present the result of research on a legal regime of Mexico.

In Latin American law, one finds, as historical antecedents, the European traditions such as catholic morality, liberal democracy political structure and capitalist social structure. Regarding the legal system, the Spanish, Portuguese and French laws have influenced, so it is generally said that Latin American law belongs to the civil law tradition and is opposed to the common law of the United States of America that is located in north of Latin American/Mexican territory.

In this sense, there are opinions that Latin American law is a projection of Western law. If so, it is not important to Japanese law because it also has its source with the Western legal system.

However, René David (1978) or Nakagawa (2000) argue that there are original characteristics in Latin American law since the influence of maternal law is reflected in society and the environment of Latin America. In particular, the reason why Nakagawa wants to study Latin American law is finally the world's peace by increasing mutual understanding through the study of laws. This stance would, indirectly, coincide with the ideal of establishing the uniform code of the civilized

nations to which both Saleilles and Lambert were headed at the beginning of the 20th century.

Karst (1964) and Rosenn (1971) express their interest in the study of Latin American law that aims to support the general theory of legal evolution. That is to say, if the attention is paid to the social changes of the Latin American countries, the interrelation between the law and the society can be observed.

In this way, the significant meaning of the study on Latin American law is the possibility of getting the experimental models through the investigation of different legal solutions in the changing situations that are presented in the Latin American countries, which means that these countries have excellent aspects to respond to such situations while also implicates that the political and economic conditions of some countries are unstable. To this last point, it should not mislead that Latin American countries are “disordered,” but it is asserted that the legal institutions of Latin America are “overdeveloped” and refined (Karst and Rosenn, 1975: p. 6, Godan and Reams, 1995: p. 115). In addition, taking into account its legal tradition, Latin American law can offer us an interesting model and example to obtain an objective result for the study on the succession of laws, which aims to understand how the phenomenon of legal culture translation and the content of the law is developed internally.

Economic relations between Japan and Mexico

Once clarified the importance of the study on Latin American law, the current relationship between Japan and Mexico focusing on the behavior of the Japanese investment to Mexico will be observed briefly.

On the occasion of the Economic Partnership Agreement between Mexico and Japan (the EPA) entered into force from 2005, the relations between the two countries have been closely connected (Okabe and Carrillo, 2014). The EPA, which aims to promote foreign trade and foreign direct investment (FDI), in addition to bilateral cooperation, has impacted in various areas. With regard to trade, this agreement represents a platform for diversifying the market towards Japan, a strong

Table 1 Japanese FDI flow in Mexico 1999-2016

Unit: MMD

| Year | Amount of IED | Average 2000-2004 | Average 2005-2016 | Average 2012-2016 |
|-------|---------------|-------------------|-------------------|-------------------|
| 2016 | 1,556.9 | 305.2 | 893.7 | 1,704.4 |
| 2015 | 1,722.4 | | | |
| 2014 | 1,436.2 | | | |
| 2013 | 1,969.1 | | | |
| 2012 | 1,837.4 | | | |
| 2011 | 936.1 | | | |
| 2010 | 1,080.4 | | | |
| 2009 | 375.6 | | | |
| 2008 | 565.0 | | | |
| 2007 | 451.9 | | | |
| 2006 | -1,428.9 | | | |
| 2005 | 222.3 | | | |
| 2004 | 503.4 | | | |
| 2003 | 188.9 | | | |
| 2002 | 203.7 | | | |
| 2001 | 187.3 | | | |
| 2000 | 442.8 | | | |
| TOTAL | 13,497.9 | | | |

Source: Compilation by author with the data of Secretaría de Economía (2017)

economy in Asia.

As **Table 1** shows, the EPA has stimulated the large flows of Japanese FDI to Mexico. According to data of the Secretariat of Economy of Mexico, during 2000-2004, Japanese FDI flows to Mexico were marked with 305.2 million dollars on average, the figure had increased to 893.7 million dollars in the period 2005-2016, but in particular during 2012-2016 the value is increased to 1,704.4 million dollars. These figures represent a growth of 293% from the period 2000-2004 to 2005-2016 (if the divestment occurred in 2006 is replaced by the figure on average, the FDI in this period would be 1,087.3 million dollars corresponding to the increase of 356%) and an increase of 558% from period 2000-2004 to 2012-2016 respectively. In this way, the investment from Japan to Mexico increased drastically positioning it as the 7th country that invests more in Mexico. The destination of the most part of this investment is for the automotive industry.

Before the entry into force of the EPA, there were 310 Japanese companies

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Table 2 Number of Japanese companies newly created and registered to the RNIE in the neighboring regions of Jalisco

Unit: Number of Companies

| Year | Jalisco | San Luis Potosí | Querétaro | Guanajuato | Aguascalientes |
|-----------------------|---------|-----------------|-----------|------------|----------------|
| 2010 | 1 | 0 | 1 | 2 | 2 |
| 2011 | 1 | 1 | 1 | 6 | 1 |
| 2012 | 3 | 9 | 4 | 40 | 10 |
| 2013 | 2 | 7 | 7 | 23 | 11 |
| 2014 | 5 | 8 | 5 | 18 | 10 |
| 2015 | 4 | 2 | 8 | 9 | 4 |
| TOTAL (until 2015) | 27 | 31 | 39 | 108 | 56 |

Source: Compilation by author with the data of Secretaría de Economía (2016a)

(Mexican corporations with Japanese capital) registered in the National Register of Foreign Investment (RNIE) in Mexico. From 2005 to May 2016, 430 companies increased, with a total of 740 Japanese companies, where most of them belong to the manufacturing sector, in particular the automotive industry. The flow of Japanese FDI and the creation of employment are notorious in the Bajío region of Mexico (**Table 2**). This region was able to attract new automotive assemblers (Mazda and Honda), apart from that Nissan exists already in Aguascalientes for more than thirty years.

Table 3 shows the behavior of FDI (including Japanese FDI) in the states that are part of the Bajío region where both Nissan of Aguascalientes and Honda and Mazda of Guanajuato have invested. Mazda invested 770 million dollars to build the Salamanca plant in 2013. At the time of its inauguration they hired 3,000 local employees that amounted to 4,600 to 2016. In 2012 Honda began construction of the second plant in Celaya, which invested 800 million dollars and has generated around 3,200 new direct jobs.

The localization of Japanese FDI that pursues these large customers in the Bajío region, particularly, 90% of the 108 companies registered in the RNIE until 2015 have been the result of the new Japanese FDI that was made in the period from 2010 to 2015.

The occupation of Japanese FDI in the total investment received by the States

Table 3 FDI flow in the neighboring region of Jalisco 2010-2015 (total amount and Japanese FDI)

Unit: MMD

| Year | Jalisco | | San Luis Potosí | | Querétaro | | Guanajuato | | Aguascalientes | |
|-------|----------|------------------|-----------------|------------------|-----------|------------------|------------|--------------------|----------------|--------------------|
| 2010 | 2,249.7 | 75.9 | 473.5 | 3.1 | 847.9 | -8.4 | 401.5 | -21.5 | 316.1 | 175.9 |
| 2011 | 1,045.7 | 73.7 | 244.0 | 4.3 | 1,012.4 | 5.8 | 1,420.4 | 183.2 | 213.3 | 99.7 |
| 2012 | 1,410.9 | 197.7 | 859.8 | 39.1 | 16.3 | 45.9 | 1,293.5 | 664.3 | 351.7 | 247.1 |
| 2013 | 2,923.6 | 120.5 | 1,964.6 | 105.9 | 882.7 | 120.2 | 2,551.6 | 595.3 | 340.8 | 300.0 |
| 2014 | 1,633.3 | 204.0 | 981.2 | 138.3 | 1,072.2 | 59.8 | 1,195.1 | 466.8 | 625.0 | 198.2 |
| 2015 | 2,691.4 | 87.8 | 1,773.3 | 89.6 | 1,386.2 | 103.3 | 1,614.9 | 328.2 | 677.7 | 372.1 |
| TOTAL | 11,954.6 | 759.6 (6.35%) | 6,296.4 | 380.3 (6.03%) | 5,217.7 | 326.6 (6.36%) | 8,477.0 | 2,216.3 (26.1%) | 2,524.6 | 1,393.0 (55.1%) |

* Left column of the respective states shows the total FDI received and the right column indicates the FDI coming from Japan. The figure in parentheses means the percentage occupancy of Japanese FDI in the total amount in the period.
Source: Compilation by author with the data of Secretaría de Economía (2016b)

of Guanajuato and Aguascalientes is relatively high. The figure corresponding to the States of Jalisco, San Luis Potosí and Querétaro has been limited, however, it tends to increase in recent years. For example, in the total amount of FDI made during 1999 to 2015, Japan is located in the 9th place as a country of origin of FDI in the State of Jalisco, but will be placed in the 5th place if we only take the figures from 2010 to 2015.

An operation of estimation of the impact in the creation of the employment by the Japanese companies is carried out based on the average number of the local employees working in the Japanese companies in the Center-South America according to the data of the Ministry of Economy, Trade and Industry of Japan (METI, 2007) (METI, 2015).

The average number of employees in Japanese companies in that region during 2001 to 2015 was 216 per company. Based on this figure, the total number of jobs in Mexico that the 310 Japanese companies registered in the RNIE during 1954 to 2004, a year after the opening of the EPA, have generated, would have been 66,960 employees: it means that 1,339 annual jobs have been created on average (216 employees on average*310 companies/50years).

The same operation is applied for 10 years from 2005 when the EPA entered into force. During this period, 417 Japanese companies were established in Mexico, which represent the creation of 90,072 jobs in total: or 9,007 annual jobs. Compared

to the pre-EPA figure, it is estimated that Japanese FDI has generated an impact 6.7 times more in job creation during 2005 to 2015. With regard to Jalisco, the impact will be even greater. Before the EPA it was 30 jobs on average a year, and after that it is presenting 432 annual jobs, which represent an increase of 14 times. Of course, it should be considered that the reality is different from the previous estimate in the case of the State of Jalisco due to the presence of Honda.

Taking the hiring number that Mazda performs in 2016 (4,600 employees) as the maximum estimated figure, the number of corresponding annual jobs in Mexico will be 28,520 for the period 1954–2004 and 191,820 for the period 2005–2015. In the case of the State of Jalisco, this number will be 644 and 9,200 respectively.

In addition, it should be taken into account that the incursion of Japanese companies in the automotive sector including car parts makers generates a spillover effect in the creation of indirect employment in local subcontractors and external service providers.

The effects of investment are diverse, for example: job creation as just seen, increased commercial transactions and even a possible technology transfer. Although the latter will be difficult to achieve if the local companies are not incorporated into the production network created by that investment.

In this way, relations between Japan and Mexico are again being tightened due to the entry into force of the EPA. In the next section, the result of research on the reform of the legal framework for industrial property protection and its impact on regional development in Mexico will be presented.

As mentioned above, Japanese investment in Mexico is increasing through the EPA. In this situation, the Japanese industrial community says: “apart from direct damage by counterfeit products, more problematic is that there is a social climate that allows it in Mexico”. Through knowing the framework of industrial property protection of Mexico and its efficiency we can understand more the present situation of piracy in Mexico, importance of industrial property, in particular, patent and finally the Mexican society. I hope that the following research result will contribute to the future development of Mexican law or Latin American law study.

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Legal framework for industrial property protection and its importance for regional development in Mexico: Challenges and perspectives

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Abstract

While increasing the importance of industrial property in Mexico as an element for the country's economic growth and competitiveness, there is a considerable rampant of piracy. Mexican governments are fighting this trend by establishing various strategies including the reforms of the relative laws. The decree published in 2010 aimed to give the competent authorities greater authority to pursue the infringement of industrial property by means of which it seeks to create a healthy and safe environment for inventors and companies associated with the foreign direct investment in Mexico. There is a positive effect of the reform in 2010 to date, and the important thing is that the authorities continue to exercise the faculties granted in a rigid and constant way.

Introduction

In general, industrial property is an extremely important intellectual resource.

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The worldwide flow of counterfeit goods or pirated products is a greater threat, especially, for a country that has few natural resources. Moreover, in deepened economic globalization, these pirated products are circulated inter-borders, so the protection of industrial property is no longer the problem of a single country, but requires greater international cooperation.

The industrial (and intellectual) property regime is one of the policies for the promotion and protection of industries and even cultures in a country, and while commercial transactions and/or persons are exchanged at international level, various international conventions such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) were established. Moreover, such international conventions have affected a country's internal regime recently, and even some countries have modified their own systems to adhere to those conventions.

While the discussion at the level of WTO or TRIPs cannot be concluded due to the debate between advanced and developing countries and/or various regions, some countries or regions include industrial property regulations in the regional trade agreements trying to pursue their own interests or to require that their counterparts to improve the protection regime (Koyama, 2010: p. 78 et seq).

Speaking of Mexico, the violation of industrial property is widely spread, and although it is observed that the competent authorities establish various anti-piracy measures, these have not been very effective. There are also several obstacles to solving this problem completely because of the people's conscience with piracy and the existence of organized crime. This issue is a matter of paramount importance to Mexico for continuing to attract foreign direct investment (FDI) for the country's industrial growth. It is for this reason that several reforms have been made to the laws relating to the industrial property in the last years in Mexico.

As described above, this paper target, first, the current situation of counterfeit goods and pirated products in Mexico, secondly will observe the behavior of inventions, especially the applications and concessions of patents as an instrument in increasing use for the protection and more flexible flow of resources between countries, and thirdly will analyze the reforms to the laws concerning the industrial property protection carried out in recent years, and will finally conclude indicating

the effects and perspectives of them.

Piracy today

The anti-piracy campaign in Mexico has become more active in recent years, which comes from various causes among which an important element has been the “Security and Partnership for Prosperity in North America”, which is the initiative taken by NAFTA members³⁾. Through this initiative, the objectives are established to achieve a greater promotion of companies and/or business activities between the three countries, and in particular, “Intellectual Property Action Strategy” has been created⁴⁾.

In parallel with this movement, in Mexico the “National Agreement against piracy” was established in 2006 through which various actions were triggered against piracy (Comité interinstitucional para la atención y protección de los derechos de autor y de propiedad industrial, 2006)⁵⁾.

The rampant of pirated products, today in Mexico, affects considerably not only the productive structure but also the generation of employment and finally the economic development of the country. Moreover, counterfeit goods have decreased the sale of original products, which also reduces competitiveness (profits, new investment, etc.) of the companies involved. All these aspects give a big negative impact to the competitiveness of the whole country due to the decline in the nation’s tax collection.

3) The initiative began on March 25th, 2005. The working group has been created for various topics. Professional meetings are held inviting representatives of the private sector in order to establish the objectives, propose strategies and achieve them.

4) The aim of this strategy is to detect and stop counterfeit products and pirated goods, to promote educational activities against piracy in the business community and to analyze the infestation of piracy in cooperation between the three countries.

5) According to the National Anti-Piracy Agreement, published in June 2006, 50% of clothing currently consumed on the market had its origin in smuggling and piracy, resulting in a loss of 9,451 million dollars by illegal product consumption for the sector. The impact of these infringement acts on the industrial plant has led to the closure of 30% of micro-enterprises and the loss of 400,000 jobs (Comité interinstitucional para la atención y protección de los derechos de autor y de propiedad industrial, 2006: pp. 4-5).

Causes of the piracy rampant

In general terms, the factors of production and distribution of counterfeit products are: 1) demand from customers who want cheap products and their lack of morality; 2) existence of producers and distributors who wish to gain in a short time; 3) lack of brake in both customers and producers (Kurose, 2005, pp. 432-433).

The causes of the piracy infestation in Mexico are similar to those listed above. Previously we have conducted a study on the rampant of pirated products in Mexico (Okabe, 2011). Here we will observe the finding again briefly:

At the private level, the American Chamber Mexico has been conducting the “survey of consumer habits of pirated and counterfeit products in Mexico”⁶⁾. The result of the survey serves to observe the habits and/or the custom of the acquisition of the pirated products in Mexico. This survey was carried out first in 2007 and four surveys have been conducted heretofore among which, according to the third survey carried out in 2009 that is the most complete version, it is estimated that the economic loss of Mexico due to piracy during that year run up to 2,306 million pesos. The CD and DVD industry is the one that has the greatest impact with the amount of 570.6 million pesos and the apparel sector follows with the loss of 198.9 million pesos (American Chamber Mexico, 2009: p. 36). In this way, it is observed that counterfeiting occurs mainly in the fields of copyright and trademarks in Mexico.

According to the fourth survey, piracy is believed to exist mainly because of the economic situation with lower employment, and that is a way of making money easily. In addition, 91% of survey respondents know someone who buys pirated products, and 54% of them would recommend a friend to buy counterfeit products (American Chamber Mexico, 2011: p. 7).

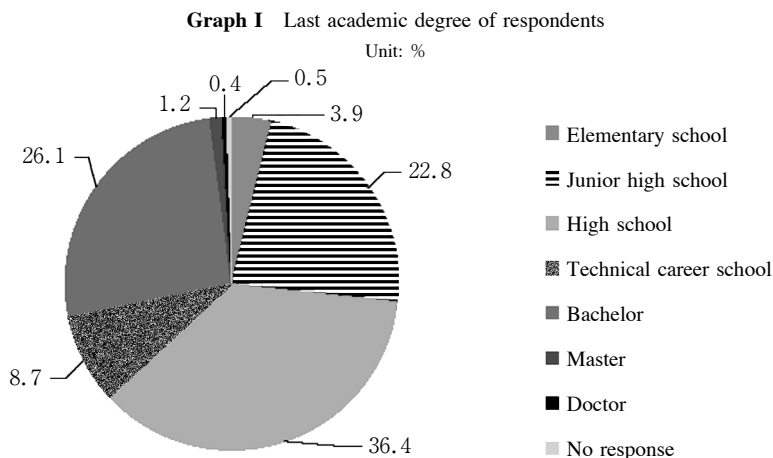
In the same way, the conscience of the Mexican-clients of the pirated products

6) The questionnaire of the third survey consists of 78 questions and 1,008 valid cases were obtained as a sample. The survey was conducted in the 4 major cities of Mexico, covering the following responses respectively: Mexico City (335); Guadalajara (223); Monterrey (212); Puebla (238). The fourth and most recent survey also was conducted with 1,000 face-to-face interviews in high-traffic points with people aged from 16 to 55 in the same cities.

must be recognized. Mexicans always want to buy cheaper goods whose motive is simply that they are economic. This is because the salary for Mexicans is not at the level of being able to buy original products and also the governments do not offer measures to compensate it. Thus, “Unfortunately, pirated products and counterfeit goods have been recognized in recent years. People justify it because of the economic crises that Mexico suffers”⁷⁾.

On the other hand, while legal regimes against piracy are sufficiently established in Mexico, the problem is not at this point but in its implementation and application in the right way. There would be no one among those who reside in Mexico who does not know where pirated products are sold. In spite of this fact, the application of the rules by competent authorities and/or policies should be described as “not solid” creating a suspicion that there is a black relationship with the illegal sector in the bottom⁸⁾.

But do Mexicans acquire pirated products only because of the low income or economic stagnation of the country? According to the survey conducted by the American Chamber Mexico, 58% of those who consummate pirated products



Source: Compilation by authors with the data of American Chamber Mexico (2009)

7) Word from Mr. Roberto Cantoral Zucchi, General Coordinator of the Society of Authors and Composers of Mexico in “*La ley antipirata no es la panacea*”, *El economista*, April 12, 2010.

8) The result of the third survey indicates that there is organized crime in which the authorities are involved, or corruption networks are established in the various areas of government that allow the distribution of pirated products. (American Chamber Mexico, 2009: pp. 29-30).

recognize the illegality of them. From another point of view, it means that another 42% has no illegal concept when buying them. The important thing is that 63% of survey respondents have higher education (except technical careers) (see **Graph I**). A manager of the American Chamber Mexico had stated that “Mexicans, regardless of their income level, often buy pirated products”⁹⁾. In this sense, the acquisition of counterfeit goods or pirated products is spread throughout Mexico as a custom or socio-cultural phenomenon, without being able to conclude that the cause is only “lack of morality”.

Attention to the industrial property as an opportunity for economic advancement of Mexico

As mentioned above, the infestation of piracy in Mexico is widely penetrated, in particular by violating copyright and trademark regulations. Below, actual situation of the patent which is one of the industrial property rights and is important engine for innovation and economic growth will be observed.

It is said that the main engine by which inventors apply for a patent is “to acquire an economic and competitive advantage over others” in order to exploit it exclusively for a given time (González D. 2015). It should be noted that “the value of intangible assets, such as trademarks and patents, is a matter of paramount importance to companies of any size and may amount to 80% or 90% of the total value of a company” (Clarke Modet & Co. Mexico, 2016).

According to a report by the Mexican Institute of Industrial Property (IMPI), since 2010, Mexican organizations have increased considerably the number of registered patents: From the period 2005 to 2009, 174 licenses were granted on average, compared to the period ranging from 2010 to 2015 in which an average of 272 patents. (see **Table I**). It can be seen that these figures increased considerably in 2015.

However, it should be said that it is still far away to take advantage of this

9) Word from Mr. Larry Rubin, General Director of American Chamber Mexico in “*México, cuarto lugar mundial en venta de piratería y contrabando*”, La jornada, July 4, 2007.

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Table I Patent applications and patents granted to Mexicans 2005-2015

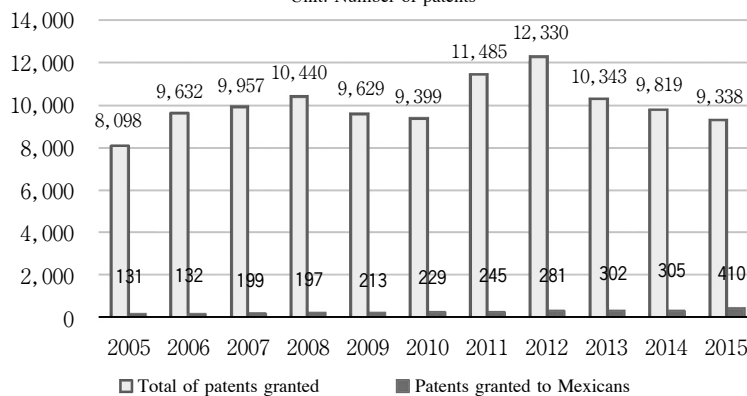
Unit: Number of patents

| Year | Patents granted | Patent applications |
|------|-----------------|---------------------|
| 2005 | 131 | 584 |
| 2006 | 132 | 574 |
| 2007 | 199 | 641 |
| 2008 | 197 | 685 |
| 2009 | 213 | 822 |
| 2010 | 229 | 951 |
| 2011 | 245 | 1,065 |
| 2012 | 281 | 1,292 |
| 2013 | 302 | 1,211 |
| 2014 | 305 | 1,244 |
| 2015 | 410 | 1,364 |

Source: Compilation by authors with the data of IMPI en cifras (2016)

Graph II proportion of patents granted in Mexico 2005-2015

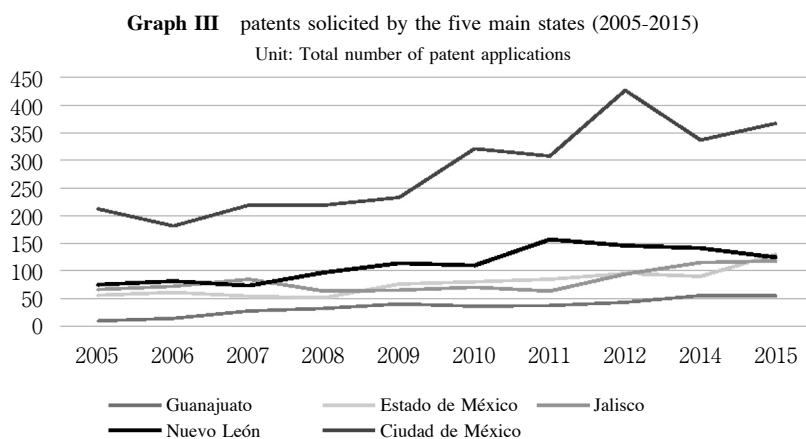
Unit: Number of patents



Source: Compilation by authors with the data of IMPI en cifras (2016)

regime, because 410 patents were granted to Mexican holders in 2015 against 1364 applications done in Mexico. In other words, only 3 of 10 patents were granted to Mexicans. The proportion is still less in all of the patents granted in 2015, which only corresponds to 4% of the total being the largest figure in the last ten years (**Graph II**).

Moreover, it is considered that between 60% and 70% of the patents granted to Mexicans are not exploited, because many do not know what is a patent and if they



Fuente: Compilation by authors with the data of IMPI, Informe anual de (2005-2015) and IMPI en cifras (2016)
*Note: No data of 2013

manage to register it, they never exploit it (word de Cárdenas y Espinoza, researcher of the IINGEN: González D. 2015). This trend in Mexican industry and patents has been observed since years ago¹⁰⁾.

Despite of the aforementioned facts in the last paragraph, it can be seen that Mexico pays attention to the inventions increasingly. The regions that demonstrate this interest are concentrated in the five States historically: Mexico City, Nuevo León, Jalisco, State of Mexico and Guanajuato. Among these States, Guanajuato is highlighted with 611% of the increase in applications compared to the figures of 2005 and 2015 (State of México: 232%, Jalisco: 178%, Mexico City: 173% and Nuevo León: 165%) although Mexico City remains the number one in absolute terms (**Graph III**).

These five federal entities occupied more than 70% of all patent applications in Mexico in 2005. However, in the course of ten years this percentage goes down and the occupation of these five States in the patent application became 58% in 2015 (**Table II**). This diversification shows that the culture of industrial property is taking root in all of Mexico's territory. Taking into account the importance of patent in

10) It is important to emphasize that according to Hernández Priego, 25% of the patent applications made by Mexicans come from the universities; while companies are concentrating on 27%; the independent inventors with 36% and the remaining with 12% that is from scientific and technological research institutes of the public sector (Hernández P. by González D., 2015).

Legal framework for industrial property protection and its importance for regional development in Mexico: Challenges and perspectives

Table II Occupation of patent applications by the five main states (2005-2015)

| Year | Total of applications | Occupation of patent applications by five states |
|------|-----------------------|--|
| 2005 | 584 | 71.5% |
| 2006 | 574 | 71.2% |
| 2007 | 641 | 71.4% |
| 2008 | 685 | 67.4% |
| 2009 | 822 | 64.2% |
| 2010 | 951 | 64.8% |
| 2011 | 1,065 | 61.0% |
| 2012 | 1,292 | 62.3% |
| 2014 | 1,244 | 59.3% |
| 2015 | 1,364 | 58.2% |

Source: Compilation by authors with the data of IMPI, informe anual de (2005-2015) and IMPI en cifras (2016)

*Note: No data of 2013

business and industrial activities, this trend can lead to healthy and safe economic growth in Mexico.

As referred to above, the industrial property regime gives legal certainty to inventions and allows for the development of economic and industrial activities. In recent years where economies and technologies are internationalized, the number of countries seeking to obtain patents for the purpose of selling more goods abroad or protecting them from counterfeiting is increasing. The one that gives a global legal framework for this purpose is the Patent Cooperation Treaty (PCT) entered into force from 1978 to which Mexico is attached. Through this treaty, the interested parties make the “international application” before the authority of their own country-participant of the PCT by means of which the examination is carried out and finally concrete the internal process in the respective countries in where they want to register its patents, determining them in the established time. In the internal process, using the result of this international review, the corresponding investigation is carried out to define the granting of patents in a more agile and efficient way¹¹⁾.

11) The PCT differs from the “normal” process that is through the Paris convention mainly because of the “waiting time” that is granted to decide and solicit invention protection in any country. Whereas the PCT provides 30 months as the maximum date for deciding whether or not to protect an invention and in which country; the Paris convention only has a period of not more than 12 months, i.e. the PCT route offers 18 months more than the normal period. (OMPI, 2016b).

Table III Ten major FDI countries to Mexico 2005-2015

Unit: MMD

| Country | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------|----------|----------|----------|----------|---------|---------|----------|---------|----------|---------|----------|
| USA | 11,840.1 | 13,469.8 | 13,117.8 | 11,761.4 | 7,482.8 | 7,032.4 | 12,218.1 | 9,592.2 | 13,749.1 | 7,747.2 | 15,797.5 |
| Netherlands | 4,186.9 | 2,748.6 | 6,638.0 | 2,096.7 | 2,673.0 | 9,154.9 | 2,590.0 | 1,640.2 | 5,440.4 | 1,626.2 | 900.1 |
| Spain | 2,718.5 | 1,483.0 | 5,492.5 | 5,018.2 | 3,032.2 | 4,205.7 | 3,539.4 | -437.6 | 180.5 | 4,447.0 | 2,803.5 |
| Canada | 692.1 | 979.9 | 880.2 | 3,454.0 | 1,839.5 | 2,022.8 | 1,431.7 | 1,848.8 | 4,521.9 | 2,981.9 | 1,089.6 |
| Belgium | -21.0 | 69.7 | 228.4 | 142.3 | 345.9 | 38.1 | 163.8 | 0.4 | 13,290.3 | 1,260.1 | 859.7 |
| Germany | 334.1 | 750.8 | 649.4 | 667.1 | -15.3 | 448.5 | 397.3 | 1,087.2 | 1,713.2 | 1,620.7 | 1,267.9 |
| Japan | 222.3 | -1,428.9 | 453.5 | 554.1 | 385.3 | 573.1 | 926.6 | 1,805.0 | 1,911.2 | 1,330.2 | 1,385.7 |
| Luxembourg | 169.2 | 177.8 | 542.9 | 352.6 | 192.6 | 417.4 | 146.4 | 779.8 | 1,877.7 | 771.7 | 280.5 |
| UK | 1,349.2 | 974.4 | 614.2 | 1,421.5 | 423.7 | 721.9 | -1,030.3 | 505.5 | 1,299.6 | 256.6 | 594.7 |
| Switzerland | 323.9 | 603.0 | 617.3 | 242.6 | 95.8 | 288.5 | 1,206.8 | 277.7 | 319.9 | 412.9 | 322.2 |

Source: Compilation by authors with the data of Secretaría de Economía (2016)

This type of formalities is very important for Mexico where actively receives FDI (see **Table III**) in the sense that it allows foreign stakeholders and entrepreneurs to develop their activities flexibly by obtaining the patent registration within the country.

In fact, in Mexico patent applications are mostly made by PCT rather than directly to the Mexican authority. In 2015, 76% of applications have been carried out via PCT in this global strategy (**Graph IV**). It indicates the international position of Mexico as a receiving country of the FDI and important platform of the activities and of production using the patents.

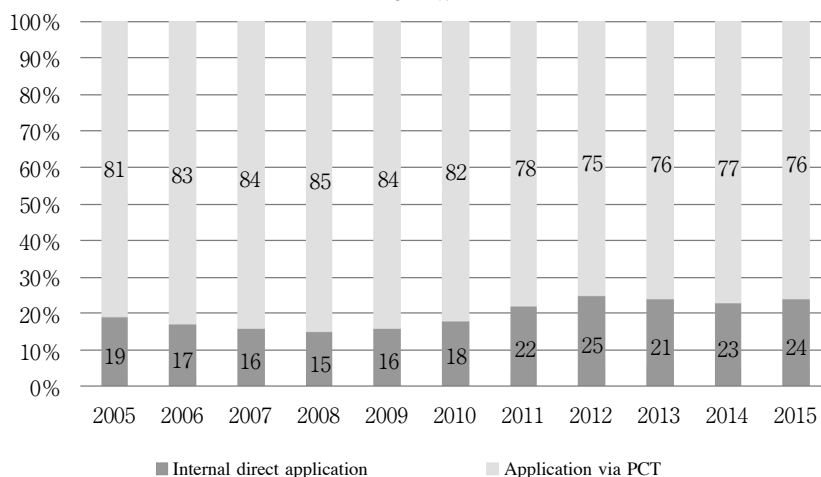
One of the reasons why they make the investment in Mexico is to strengthen the economic activities within the country, which would require the greater protection of the advantages with which they realize the respective activities through patent filing. Despite of this reason, not all countries with the largest amount of FDI in Mexico need such protection. **Table IV** shows the main patent-holding countries in Mexico (2005-2015). According to this data, among the top six countries with the largest FDI to Mexico in the last ten years, United States of America is the country with more patents registered.

On the other hand, countries with lower FDI for Mexico, such as Germany, Japan and France, are the nations with the largest patent holdings in Mexico. In this regard, Japan's average ownership of the last five years was increased by almost 250% compared to the figure marked at 2005, when the Economic Partnership

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Graph IV Patent application pathways 2005-2015

Unit: %



Source: Compilation by authors with the data of IMPI en cifras (2016)

Table IV Main patent-holding countries in Mexico 2005-2015

| Country | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| USA | 4,338 | 5,180 | 5,094 | 5,483 | 4,831 | 4,769 | 5,612 | 5,924 | 4,792 | 4,514 | 4,270 |
| Germany | 806 | 877 | 885 | 899 | 786 | 712 | 960 | 1,027 | 939 | 886 | 805 |
| Switzerland | 386 | 506 | 506 | 538 | 553 | 585 | 775 | 753 | 630 | 570 | 532 |
| France | 558 | 711 | 745 | 682 | 592 | 439 | 551 | 568 | 500 | 398 | 432 |
| Japan | 284 | 378 | 418 | 407 | 399 | 401 | 579 | 794 | 665 | 709 | 601 |
| UK | 234 | 265 | 272 | 252 | 266 | 206 | 302 | 305 | 257 | 243 | 237 |

Source: Compilation by authors with the data of IMPI en cifras (2016)

* Number shows the amount of patents that the countries have

Agreement between Japan and Mexico came into force, on the occasion of which the Japanese FDI towards this country is increasing drastically, in particular in the automotive industry (e.g. Mazda, Honda and Toyota in Guanajuato). The same matter can be said with Germany (BMW in San Luis Potosí and Mercedes Benz in Aguascalientes). France also performs considerable FDI in Mexico in both the automotive and aerospace industries, and that is why industrial property assurance would be one of the primary strategies in the development of business activities.

In this sense, it is a matter of paramount importance to establish the system for obtaining patents in Mexico for its economic growth, and its flexible application even more will give to the foreign countries incentives of the investment towards

Mexico. As part of this issue, in recent years, Mexico has adopted various international regimes for the promotion of patent applications and concession such as the Patent Prosecution Highway (PPH)¹²⁾, PCT-PPH¹³⁾ and PPH-Mottainai¹⁴⁾.

In addition to the above-mentioned approach, the following may be said: In general terms, although Mexico itself does not develop or exploit inventions, other foreign countries-strong investors to Mexico exploit them. To carry it out, it is observed that they use, in the first instance, the authorities of their respective countries via PCT and then register by internal procedure using the international review for this purpose with the smallest time within Mexico with the purpose of taking the possibility to asserting their inventions in various countries (which is one of

12) One or more countries enrolled in the Paris convention may be solicited to initiate a review of this procedure. On average the complete process of a patent in Mexico (since it is received until the opinion is issued for concession or refusal) goes from 3 to 5 years (Archundia, 2014). This procedure consists of two phases: a form examination and a substantive examination. The form examination is held by the office of the country in which the application is entered, prioritizing that the object to patent complies with industrial application, inventive activity, technique condition and novelty. To later issue a written opinion to the office of the country in which the invention is wanted to protect and that office performs an accelerated substantive examination. Until today Mexico has implemented this program with nine intellectual property offices in various countries, among which it is observed that the first office with which it was implemented is United States of America.

13) Protection procedure that works as a patent application in another country, through the PCT. It is applicable to member countries of the same PCT. This procedure requires WIPO to take up the form examination and the search for priorities, and the granting of the rights or substantive examination corresponds to the national institution of the country to which patent protection is sought (IMPI, 2016a). The art. 40, Chapter 5 “of the patent processing” of the Industrial Property Law of Mexico establishes: When a patent is requested after doing so in other countries, it will be possible to recognize as priority date the first presentation in that country, provided that it is presented in Mexico within the time limits determined by the international treaties or, failing that, within 12 months following the application for a patent in the country of origin”. In this modality the process changes a little, since the international phase is for the form examination and the national phase will be the substantive examination of that application.

14) The PPH Mottainai is a modality in which, at the request of the applicant, the benefit of an expedited examination is obtained for that application at the post examination office using the results of the examination of the previous examination office, regardless of the office in which the first deposit was produced, provided that the conditions established by the corresponding guides are fulfilled (Dirección Divisional de Patentes, 2012). Mexico has signed the modality with Japan and with the Office of the European Union in 2015.

the objectives of the PCT itself).

All this shows that Mexico is converted into an industrial platform for several countries where Mexican companies or entities are not the main protagonists. It should be noted that the percentage of patent holdings granted to Mexicans is not the result of poor processing by them, but due to the still little interest of the population to be pioneers and interfere in this issue unlike foreigners and investors who see Mexico as an area of opportunity and commercial expansion. Moreover, the generation of patents not only represents an opportunity for growth for the Mexican country, but it guarantees a dignified and quality future for those who promote the competitiveness of the national economy through their creations, inventions and innovations. Proof of this fact is the confidence that the government places on entrepreneurs as a potential for growth through a series of economic supports for projects that provide innovative solutions to current problems, or improve the competitiveness of certain sectors (INADEM, 2015).

As has been said repeatedly, it is therefore very important to establish a protective framework for industrial property. Mexico has a diversity of legislations that protect not only inventions but also copyrights and trademarks from Political Constitution to other special laws, and through the deepening of economic globalization, its importance is growing increasingly. The following section will analyze the main legislations regulating the industrial property protection in Mexico.

Industrial Property legislation reforms

Next, we will observe the series of reforms of the legislations for the industrial property protection against the infestation of piracy (in particular, violation of copyright and trademark) in Mexico.

As is well known, there are several international conventions relating to industrial property. Among them, the most effective one to date is the WTO-TRIPs. Mexico has also adhered to some conventions and participated in the WIPO (World Intellectual Property Organization) Copyright and Performances and Phonograms Treaty in 2002 (Montalvo, 2007: pp. 6-8).

In addition to international standards, Mexico has its own legislation. The history of the industrial property protection in Mexico goes back before its independence from Spain. In the Political Constitution of 1814 (the so-called Apatzingan Constitution), its art. 38 guaranteed the freedom of trade and industry, and the Political Constitution of 1857 after independence recognized in its art. 28 inventor a “privilege right” although it was not “exclusive right”. Before that, in 1832 the Law on the right of ownership of inventors or *perfectors* of some industry was established, which guaranteed an exclusive right of a 10-year period for patents and 6 years for improvements (Labariega, 2003: p. 29).

Industrial property is enshrined in the current Political Constitution (arts. 28, 89, 133 and others), thus placing at the apex this supreme law various laws related have been established in Mexico: For example: Industrial Property Law (1991); Federal Copyright Law (1996); Federal Consumer Protection Act (1992); Federal Penal Code (1931); Federal law for the production, certification and trade of Seeds (2007); and Customs Law (1995), among others. The integration into the international economy in the 80s after the participation in the GATT and the subscription to NAFTA in the 90s by which Mexico began to receive the largest foreign investment altered the policies of the industrial property protection more actively.

Reforms for greater simplifying of persecution against industrial property right infringement

Among the laws listed above, the most discussed ones were the Industrial Property Law and the Federal Penal Code as main measures against the violation of industrial property rights in Mexico in recent years. Finally, in June 2010 a decree was issued by which these laws were amended in an important way.

Reform of the Penal Code in the field of industrial property (copyright)

The Federal Penal Code has the series of provisions on the violation of

industrial property (copyright, etc.) and establishes the penalties against the relative crime: where it imposes prison term from three to ten years and fine from two thousand to twenty thousand days (of general minimum wage in force in the Federal District) to those who produce, introduce to the country and distribute copies of works, phonograms, videograms or books, protected by the Federal Copyright Law, in fraudulent form, for profit and without the authorization of the proprietor; and to suppliers who supply raw materials or inputs intending for the production or reproduction of such works; And also to whoever manufactures for profit a device or decoder of a computer program (art. 424 bis of Penal Code).

Likewise, it imposes prison term from six months to two years or fine from three hundred to three thousand days (of general minimum wage in force in the Federal District), to those who intentionally and without right exploit for lucrative purposes an interpretation or an execution (art. 425 of Penal Code). In the same way, the Code imposes prison term from six months to four years and fine from three hundred to three thousand days (of general minimum wage in force in the Federal District) to those who manufacture and distribute a device or decoder of an encrypted satellite signal, program carrying, without authorization of the proprietor and also to those who carry out for profit any other acts that violate the signal (art. 426 of Penal Code).

As regards the aforementioned penalties for copyright infringement, the previous Penal Code, in its art. 429, indicated that the crime would be pursued by victims' quarrel.

In this regard, the reformed Code establishes in the same art. 429: the offences envisaged... will be pursued *ex officio*.... In this way, the related offences will now be pursued *ex officio*, that is, without the victims' declaration of the grievances, criminal proceedings may be carried out.

Reform of the Industrial Property Law

Likewise, the decree of 2010 made the important reform to the Industrial Property Law.

The same law establishes the formalities of acquisition, expiration and

cancellation, etc. on industrial property such as patents, utility models, trademarks and trade names. In Mexico there is an organism that is in charge of the administrative procedures of the industrial property: IMPI (art. 6 of Industrial Property Law). The same institute, administrative organization, has various functions as a judicial body (Department of Commerce and Investment of JETRO, 2002: pp. 55-58), and will determine the application of administrative penalties against the infringement acts established in the Law referred (art. 214 of the Industrial Property Law). Therefore, it has a broad power to carry out visitation, inspection, prevention, etc. to supervise industrial property (e.g. art. 215 of the Industrial Property Law).

In parallel with administrative penalties, industrial property offences are stratified in Chapter III of Title VII in the Law, and for example, its art. 223 establishes the following offences, namely: relapse in acts violating the right of industrial property either patent, utility model, industrial design or trademarks protected by this Law, once the first administrative sanction was imposed; benefit (falsify, produce and distribute) by protected trademarks in fraudulent form; and disclose and use an industrial secret and even seize it without the holder's consent.

The offences caused by the counterfeit products will be pursued by a quarrel of the offended party in principle (frac. II of art. 223 of Industrial Property Law). But, the reform carried out in 2010 establishes the following as art. 223 bis:

Imprisonment from two to six years and fine from one hundred to ten thousand days of general minimum wage in force in the Federal District shall be imposed to those who sell to any final consumer in public ways or places, in a fraudulent manner and for the purpose of commercial speculation, objects that have falsification of trademarks protected by this Law. If the sale is made in commercial establishments or in an organized or permanent manner, the provisions of arts. 223 and 224 of this Law will be applied. And the offences referred will be pursued *ex officio*.

In this way, the offences relating to trademarks protected by the Industrial Property Law are pursued *ex officio*, which shall extend the measures to accuse

counterfeit products of this term.

Through this reform, the art. 419 of the Federal Penal Code and the art. 223 bis of the Industrial Property Law indicate that there is no longer any need to file a quarrel to prosecute the offence relating to the violation of the rights , in particular, of author and of trademarks, which represent major cases of counterfeiting either of discs of music and film and of clothes and footwear, etc., highlighting the persecution *ex officio* of who sells pirated products in commercial establishments or in an organized or permanent way.

Motives and effects of the reforms

Two factors can be cited through by which the relative laws were reformed.

First is the external factor that is the relationship with the United States of America. As is well known, after the entry into force of NAFTA, economic relations between Mexico and the United States of America were radically tightened, and currently over 70% of Mexican exports are directed to the North American market. In addition, 50% of foreign direct investment to Mexico is occupied by the United States of America so the relationship with this country is extremely important for the Mexican economy.

In the free trade agreements consorted by United States of America, industrial property provisions tend to be detailed in comparison with those of WTO-TRIPs (the so-called TRIPs Plus) (Roffe, 2006: pp. 30–31). For example, regarding to the *enforcement*, there are some treaties and/or agreements whose legal frameworks require the parties to ensure the exercise of criminal proceedings on border trades without the need for a formal quarrel by victims or right holders (Liberti, 2010: p. 5). The NAFTA, in its Chapter XVII, establishes the series of provisions relating to industrial property to generally outline international conventions and its content, scope and criterion of the industrial property protection with that the parties have to comply.

The faculty granted, through Mexican Penal Code reform, to the prosecution

ex officio is not clearly established in NAFTA, although it was an outstanding issue by which the United States of America has been working (or pressing), either officially or unofficially, to Mexico. Especially this movement was activated after the aforementioned “Intellectual Property Action Strategy”, which affected the reform of Mexico’s related laws. The United States of America appreciates Mexico for the reform, however, it is not forgotten to require that the relative law grant this power *ex officio* to the customs authorities (Office of the United States Trade Representative, 2010: p. 35).

On the other hand, the weakness or blunting of preventive actions against piracy on the part of the administrative authority may be cited as an internal element. As mentioned above, the administrative investigation of the offences will be carried out by the IMPI (art. 215 of Industrial Property Law), and when it considers that the infringement exists, it shall determine the application of the administrative penalties.

Inspection visits derived from the IMPI faculties, especially *ex officio*, increased after the “National Agreement against Piracy” was established in 2006, compared to previous years. However, from 2007 to 2010, the same visits came to “reach a peak”,

Table V Inspection visits made (2001-2015)

| Year | By quarrel of part | | | | | Ex Officio | | | Total |
|------|-----------------------------------|------------------|-----------|-----------|-------|------------|-----------|-------|-------|
| | Industrial property infringements | Notorious brands | Processes | Copyright | Total | Prevention | Copyright | Total | |
| 2001 | 754 | n/a | 197 | 347 | 1,298 | n/a | 2,923 | 2,923 | 4,221 |
| 2002 | 791 | n/a | 134 | 380 | 1,305 | n/a | 2,413 | 2,413 | 3,718 |
| 2003 | 684 | n/a | 90 | 427 | 1,201 | n/a | 1,789 | 1,789 | 2,990 |
| 2004 | 640 | n/a | 164 | 231 | 1,035 | n/a | 1,416 | 1,416 | 2,527 |
| 2005 | 854 | n/a | 118 | 371 | 1,343 | n/a | 1,205 | 1,205 | 2,548 |
| 2006 | 540 | n/a | 155 | 243 | 938 | 150 | 1,357 | 1,507 | 2,445 |
| 2007 | 589 | 19 | 138 | 337 | 1,083 | 5 | 2,710 | 2,715 | 3,798 |
| 2008 | 413 | 57 | 99 | 400 | 969 | 0 | 2,784 | 2,784 | 3,753 |
| 2009 | 536 | 56 | 82 | 491 | 1,165 | 0 | 2,759 | 2,759 | 3,924 |
| 2010 | 544 | 5 | 48 | 382 | 979 | 0 | 2,977 | 2,977 | 3,956 |
| 2011 | 510 | 4 | 63 | 361 | 938 | 30 | 2,995 | 3,025 | 3,963 |
| 2012 | 414 | 7 | 49 | 484 | 954 | 58 | 3,095 | 3,153 | 4,107 |
| 2013 | 648 | 11 | 50 | 599 | 1,308 | 6 | 3,129 | 3,135 | 4,443 |
| 2014 | 526 | 9 | 84 | 665 | 1,284 | 3 | 3,034 | 3,037 | 4,321 |
| 2015 | 551 | 6 | 82 | 548 | 1,187 | 0 | 3,099 | 3,099 | 4,286 |

Source: Compilation by authors with the data of IMPI en cifras (2016)

and this faculty has not been so effective lately anticipating the application of administrative penalties after the investigation *ex officio* as preventive measures against the piracy, as indicated in **Table V**. According to this table (without taking into account the very low figures from 2003 to 2006), the inspection visits carried out over the last three years (2013-2015) have been increased by 10% of which was marked in 2009 before the reform.

The reform of 2010 came to grant the procurator the powers to investigate and even prosecute the violation of industrial property rights, which, apart from the administrative body, was attributed a significant power to the judicial authority with the purpose of re-activating anti-piracy actions.

According to the interview of a head person of the General Office of the Attorney of the Republic, held in January 2010, the apprehension of criminals involved in smuggling and piracy activities had increased by 200% at annual rate (Durán, 2011). Due to the lack of successful and consistent data, it cannot be stated whether or not this effectiveness of the reform in favor of the authority has continued. At least, at the start of the new regime its expected effect had been proved. However, statistics on the criminal incidence related to the violation of

Table VI Behavior of criminal incidence on industrial property

| Year | Registered criminal incidence number |
|------|--------------------------------------|
| 2001 | 561 |
| 2002 | 783 |
| 2003 | 1,091 |
| 2004 | 1,387 |
| 2005 | 1,056 |
| 2006 | 807 |
| 2007 | 974 |
| 2008 | 885 |
| 2009 | 807 |
| 2010 | 1,430 |
| 2011 | 1,876 |
| 2012 | 1,421 |
| 2013 | 1,896 |
| 2014 | 2,313 |

Source: Compilation by authors with the data of SESNSP (2016)

industrial property should be taken into account. **Table VI** shows the behavior of the crimes recorded in the field of industrial property during 2001 to 2014.

Between 2009 and 2010 there is an increase in the incidence record number and continues in subsequent years. This would not mean that the crime of industrial property in Mexico is increasing, but that the greater prosecution of the Procurator Office is becoming evident through the new tool granted by the reform. In this sense, it can be concluded that the current legal framework is giving its effect in a positive way.

Conclusions

It is clear that piracy is widespread in Mexico, and almost all of society, in some way, acquire counterfeit products against which the people lacks the awareness of the industrial property infringement. In this situation, the Mexican governments, through timely legislative reforms, have established rigid and solid regulations.

Currently, industrial or intellectual property is a very important concept for the development of economic and business activities. This importance will be increased even more by considering that Mexico is a country with the highest reception of FDI as it would lead to economic growth. And that is why Mexico must seek the greatest protection of this right, which will continue to attract the world's FDI. It should be recalled that the generation of inventions not only represents the opportunity of country development offering legal certainty to foreign investors, but also guarantees a future for those who promote the competitiveness of the national economy through their creations and innovations. To this end, the government must assist or continue to contributing in different modalities, either financial support or legal regulations in order to create a greater entrepreneurship.

In view of the situation and the requirement at international level, the reform of the regulatory framework for industrial property in Mexico has been carried out recently. The highlight of this reform is that it is no longer necessary to file complaints to pursue the violation actions of copyright and trademarks in particular, highlighting the prosecution of those who sell counterfeit products in establishments

or in an organized or permanent manner. In this way, the authorities may flexibly pursue the violation of these rights, and to date, the affirmative effect of the reform is observed: There were circumstances in which they could have accused the infringement only in the event that the offended parties would have filed the complaints, while the victims had not dared to do so because of the fear of possible reprisals. The reform concerned may offer legal certainty in favor of both local and foreign companies.

It is observed that the reform is fulfilling its role for the moment. The vital thing for a future stage is to continue efforts for the greater protection of industrial property as a promoter of economic growth creating a social environment in which all the people recognize that piracy is an illegal act, as it should be.

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付記

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