

**CIRCULAR**  
**PROVIDING GUIDELINES FOR IMPLEMENTATION OF DECREE 103-2006-ND-CP**  
**OF THE GOVERNMENT DATED 22 SEPTEMBER 2006 IMPLEMENTING**  
**THE LAW ON INTELLECTUAL PROPERTY WITH RESPECT TO**  
**INDUSTRIAL PROPERTY RIGHTS**

Pursuant to the *Law on Intellectual Property* dated 29 November 2005;

Pursuant to Decree 103-2006-ND-CP of the Government dated 22 September 2006 providing detailed regulations and guidelines for implementation of the *Law on Intellectual Property* with respect to industrial property rights;

Pursuant to Decree 54-2003-ND-CP of the Government dated 19 May 2003 on functions, duties, powers and organizational structure of the Ministry of Science and Technology as amended by Decree 28-2004ND-CP of the Government dated 16 January 2004;

The Ministry of Science and Technology provides the following implementing guidelines on Decree 1032006-ND-CP:

CHAPTER I

**PROCEDURES FOR ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS**

Section 1

**GENERAL PROVISIONS ON PROCEDURES FOR  
ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS**

**1. Grounds for generation and establishment of industrial property rights:**

- 1.1 Industrial property rights arise or are established on the grounds stipulated in article 6.3 of the *Law on Intellectual Property*, in clauses 1 to 4 inclusive of article 6 of Decree 103-2006-ND-CP of the Government dated 22 September 2006, and in the specific provisions in this Circular.
- 1.2 Industrial property rights to an invention, design of a semi-conducting closed circuit (hereinafter referred to as *layout design*), industrial design or mark shall be established on the basis of a decision of the National Office of Industrial Property granting a protection title to the applicant registering such object. The National Office of Industrial Property shall grant a protection title to the owner who shall enjoy ownership rights to the industrial property object within the scope of protection and for the effective term stipulated in the relevant certificate of protection. When a dispute arises, the owner of the industrial property object shall have the right to use the certificate of protection to prove its rights and shall not be required to produce any other evidence.
- 1.3 Industrial property rights to a geographical indication shall be established on the basis of a decision



of the National Office of Industrial Property granting a certificate of registration of the geographical indication to the body managing such geographical indication.

- 1.4 Industrial property rights to a mark which has been internationally registered pursuant to the Madrid Convention and the Madrid Treaty shall be established on the basis of the National Office of Industrial Property issuing, on the request of the mark owner, a decision approving protection or a certificate of an internationally registered mark which is protected in Vietnam; and such decision or certificate shall have the same validity as a certificate of protection issued to an applicant registering such mark in Vietnam.
- 1.5 Industrial property rights to a well-known mark shall be established on the basis of actual widespread use of such mark without requiring the conduct of registration procedures at the National Office of Industrial Property. When using rights or resolving a dispute, the owner of the well-known mark shall be required to prove the criteria making the mark well-known as stipulated in article 75 of the *Law on Intellectual Property*.
- 1.6 Industrial property rights to a trade name shall be established on the basis of actual legal use of such trade name without requiring the conduct of registration procedures at the National Office of Industrial Property. When using rights or resolving a dispute, the owner of the trade name shall be required to prove the period of time for which the owner of the trade name has used the trade name and the territory and sector in which the owner has used the trade name.
- 1.7 Industrial property rights to a trade secret shall be established on the basis of financial or intellectual investment or results of any other legal activity used to discover, create or acquire information formulating such trade secret and to protect the information formulating such trade secret, without requiring the conduct of registration procedures at the National Office of Industrial Property. When using rights or resolving a dispute, the owner of the trade secret shall be required to prove the activity by which the information formulating such trade secret was discovered, created or acquired and the means by which such information was protected.
- 1.8 The right to prevent unfair competition shall be established on the basis of the actual competitive activity without requiring the conduct of registration procedures at the National Office of Industrial Property. When using rights or resolving a dispute, the owner of the right to prevent unfair competition shall be required to prove the relevant object, territory, sector and period of time of the competitive activity.

## **2. Underwriter registering industrial property rights:**

- 2.1 The underwriter being the applicant for registration of industrial property rights (hereinafter referred to as the *underwriter*) means the organization or individual lodging the application for registration of an invention, layout design, industrial design, mark or geographical indication. On the grant of a protection title to the invention, layout design, industrial design or mark, the underwriter shall be recognized as the owner of the protection title. On the grant of a protection title to a geographical indication, the underwriter shall be recognized as the person who registered such geographical indication.
- 2.2 An underwriter must satisfy the conditions on the right to register industrial property rights stipulated in articles 86, 87 and 88 of the *Law on Intellectual Property* and in articles 7, 8 and 9 of Decree 103 2006-ND-CP. In a case of failure to satisfy the conditions, registration of the industrial property rights shall be deemed invalid.

## **3. Representative of the underwriter:**

- 3.1 An underwriter may itself directly conduct registration procedures at the National Office of Industrial Property or may do so via its legal representative in Vietnam as stipulated in clauses 3 and 4 of this Circular.
- 3.2 The following organizations and individuals may act as representative of the underwriter:
  - (a) Applicable to organizations and individuals stipulated in article 89.1 of the *Law on Intellectual Property*.



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- (i) If the underwriter is an individual, then the legal representative of the individual or an industrial property representative service organization authorized by the underwriter;
  - (ii) If the underwriter is an organization, then the legal representative of the organization or a person belonging to an organization authorized by the legal representative of the underwriter; an industrial property representative service organization authorized by the underwriter; or the head of the representative office or branch in Vietnam (if the underwriter is a foreign organization).
- (b) Applicable to organizations and individuals stipulated in article 89.2 of the *Law on Intellectual Property*: an industrial property representative service organization authorized by the underwriter.
- 3.3 When conducting procedures to register industrial property rights, the National Office of Industrial Property may transact with the underwriter or the representative of the underwriter. Any entity failing to satisfy the conditions stipulated in clause 3.2 but acting as representative of the underwriter shall be deemed an invalid representative.
- 4. Authorization for a representative to conduct registration procedures:**
- 4.1 The provision of authorization and the exercise of authorization to conduct procedures for registration of industrial property rights (hereinafter referred to as *authorization*) must comply with the provisions on authorization in Part Three of the *Civil Code* and with the provisions in this Circular.
- 4.2 Authorization shall be made in writing (power of attorney) and shall comprise the following main particulars:
- (a) Full names and addresses of the authorizing party and of the authorized party;
  - (b) Full name and address of substitute authorized party or re-authorized party;
  - (c) Scope of authorization and tasks to be implemented by the authorized party;
  - (d) Duration of authorization (the validity of a power of attorney for an indefinite term shall only be terminated when the authorizing party makes a declaration of termination of authorization);
  - (e) Date on which the power of attorney is granted;
  - (g) Signature, full name, position and seal of the legal representative of the party granting the power of attorney (and also of any substitute authorized party or re-authorized party).
- 4.3 Time when a power of attorney has legal validity in transactions with the National Office of Industrial Property shall be determined as follows:
- (a) Date on which the National Office of Industrial Property receives the power of attorney;
  - (b) Date on which the National Office of Industrial Property approves a valid substitute authorization or re-authorization;
  - (c) Date on which the National Office of Industrial Property receives notice of change of scope of authorization, early termination of authorization or change of address of the authorized party.
- 4.4 A substitute authorization or re-authorization shall only be deemed valid if the substitute authorized party or re-authorized party undertakes to be liable for all issues arising and performed previously by the authorizing party in transactions with the National Office of Industrial Property.
- 4.5 If the scope of authorization in a power of attorney includes tasks relating to a number of different procedures and the original power of attorney has already been submitted to the National Office of Industrial Property, then when carrying out subsequent procedures the authorized party shall lodge a copy of the power of attorney and specify the number and date of the application file which contained the original power of attorney.



**5. Responsibilities of underwriter and representative of the underwriter:**

- 5.1 The underwriter and the representative of the underwriter shall be responsible to ensure the truthfulness of information and data supplied to the National Office of Industrial Property throughout the process of registration of industrial property rights in accordance with the following provisions:
- (a) All data which is submitted must be signed by the underwriter or its representative, and must be sealed if there is a seal. In a case where the law requires documents to be notarized or verified by another authorized body, then they must be so notarized or verified.
  - (b) All translations into Vietnamese from foreign languages must bear an undertaking from the underwriter or its representative that they are translations from the original document.
- 5.2 The underwriter shall be liable for all the consequences and obligations arising due to acts of its representative during transactions with the National Office of Industrial Property.
- 5.3 If a representative supplies false information or makes a false declaration during transactions with the National Office of Industrial Property, the representative shall be liable to the underwriter for all consequences and shall be liable to pay compensation for loss.
- 5.4 Hereinafter both the underwriter and the representative of the underwriter shall be referred to as the applicant, unless there is some other discrete provision.

**6. Consideration of opinion of third parties when issuing a decision granting a protection title:**

- 6.1 As from the date an application for registration of industrial property is published in the Official Gazette of Industrial Property up until prior to the date of issuance of a decision granting a protection title, any organization or individual shall have the right to express a written opinion to the National Office of Industrial Property regarding the right to register, the priority right, protection criteria or other matters relating to applications for registration pursuant to article 112 of the *Law on Intellectual Property*. The written opinion of a third party shall be deemed to be an information source during the process of dealing with applications for registration of industrial property rights.
- 6.2 The National Office of Industrial Property shall, within the time-limit of one month from the date of receipt of a written opinion from a third party, notify such opinion to the applicant and fix a further time of a maximum of one month for the applicant to provide its opinion in reply. On receipt of the opinion in reply from the applicant, and if the National Office of Industrial Property considers it necessary, such National Office shall notify the opinion in reply of the applicant to the third party and fix a further time of a maximum of one month from the date of the notice for the third party to provide its written opinion in reply [second reply]. The National Office of Industrial Property shall process the opinions of the third party and the applicant on the basis of the evidence and arguments provided by such parties and on the basis of the data in the Application.
- 6.3 If the National Office of Industrial Property considers that the opinion of the third party is unfounded, it need not notify such opinion to the applicant, but must notify the third party that it refuses to consider the opinion of the third party and must specify its reasons.
- 6.4 If the opinion of the third party relates to the rights to register, and if the National Office of Industrial Property is unable to confirm whether or not such opinion is founded or unfounded, the National Office of Industrial Property shall notify the third party to institute court proceedings to resolve the matter. If within a time-limit of one month from the date of such notice the third party does not notify the National Office of Industrial Property that the third party has instituted court proceedings, then the opinion of the third party shall be deemed to have been withdrawn. If the National Office of Industrial Property is in fact notified by the third party that the latter has instituted court proceedings, the National Office shall suspend processing of the Application to await resolution of the dispute by the Court. After receipt of the Court's decision, the processing of the Application shall continue in conformity with the Court decision.



- 6.5 The National Office of Industrial Property may, if it considers it necessary and if the parties so request, organize direct discussions between the third party and the applicant in order to clarify the matters raised in their opinions.
- 6.6 The time taken for the applicant to provide an opinion in reply to the opinion of the third party shall not be included in the time-limit stipulated for the National Office of Industrial Property to conduct the relevant procedures.

## **7. General requirements applicable to application for registration of industrial property rights:**

### 7.1 Minimum documents:

The National Office of Industrial Property shall accept any application for registration of industrial property rights (hereinafter referred to as an *application*) if at the time of lodging the application contains, at the minimum, the documents stipulated in article 100.1 (a), (b) and (e) and article 108.1 of the *Law on Intellectual Property* and the documents stipulated below:

- (a) Mandatory documents applicable to applications for registration of inventions, layout designs, industrial designs, marks and geographical indications shall be:
  - (i) Declaration;
  - (ii) Documents, samples and information identifying the industrial property object to be registered. Specifically an invention application must have a descriptive section; an industrial design application must have a set of drawings and photos and a descriptive section; a mark application must have a sample of the mark and list of goods and services bearing the mark; and a geographical indication application must have a descriptive section on the particular characteristics and quality of products bearing the geographical indication and a relevant area map of the geographical indication.
  - (iii) Voucher proving payment of fee.

The National Office of Industrial Property shall refuse to accept any application for registration of industrial property rights which lacks one of the minimum documents stipulated above.

- (b) The following additional mandatory documents shall apply to applications for registration of collective marks and certification marks:
  - (i) Regulations on use of a collective mark or regulations on use of a certification mark;
  - (ii) Explanatory statement on the particular or special characteristics and quality of products bearing the mark;
  - (iii) Map fixing the relevant territory or area.

### 7.2 Requirements applicable to applications:

- (a) An application must satisfy the general requirements in articles 100 and 101 of the *Law on Intellectual Property* and, depending on the object, the particular requirements in articles 102 to 106 of the *Law on Intellectual Property* and in clauses 23, 28, 33, 37 and 43 of this Circular.
- (b) An application must also satisfy the following requirements on form in order to ensure technical requirements while processing applications:
  - (i) Any one application may only request one certificate of protection, the type of which must be consistent with the industrial property object stated in the application;
  - (ii) All application documents must be prepared in Vietnamese, except for those which may be in other languages in accordance with clauses 7.3 and 7.4 of this Circular;



- (iii) All application documents must be presented in portrait orientation (although pictures of drawings, diagrams and tables may be presented in landscape orientation) on single-sided paper of A4 size (210 mm x 297 mm) with twenty (20) millimetre wide margins from each of the four edges, except for supporting documents the originals of which are not included in the application;
- (iv) For documents required to be prepared in accordance with stipulated sample forms, it shall be mandatory to use such forms and to complete the appropriate items in the forms;
- (v) For documents consisting of more than one page, each page shall be numbered consecutively using Arabic numbers;
- (vi) Documents must be typed or printed clearly and neatly in non-fading ink without any erasure or correction. Typing mistakes may be corrected in documents already lodged, but the applicant must sign and seal the corrected items;
- (vii) Expressions used in an application must be commonly used expressions and not dialect, esoteric words or made-up words; and all symbols, units of measurement and electronic fonts used in an application must comply with Vietnamese standards;
- (viii) An application may enclose subsidiary data being an object containing an electronic file of some or all of the contents of the application documents.
- (c) Applications must satisfy the requirements of this Circular regarding numbers of copies, standard forms, photos and drawings, and particular requirements for the industrial property object stated in the application.
- (d) The Declaration and accompanying documents must contain the minimum mandatory information and be uniform; Vietnamese translations must be translations from the original; and powers of attorney must include scope of authorization and tasks to be implemented by the authorized party;
- (e) An object stated in an application must be correctly classified;
- (g) There must be a seal on documents requiring certification (for example from the body which received the first application, from a notary, from a people's committee and so forth).

7.3 The following documents may be prepared in languages other than Vietnamese but must be translated into Vietnamese:

- (a) Power of attorney;
- (b) Document certifying the lawful right to file an application, if the applicant is the beneficiary of a right to file the application from another person (certificate of inheritance, certificate or agreement of transfer of right to file the application, including transfer of an application already filed, contract for work assignment or labour agreement, and so forth);
- (c) Documents evidencing basis of entitlement to priority right (certification from the body which received the application in the case of a copy application or first application; list of goods and services for first registration of a mark; certificate of transfer of priority right if such right was received from another person).

7.4 The following documents may be prepared in languages other than Vietnamese but must be translated into Vietnamese language if the National Office of Industrial Property so requires:

- (a) Copy of first application as evidence of the basis of entitlement to priority right;
- (b) Other documents which support the application.

## 8. Fees and charges for registration of industrial property rights:



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8.1 Applicants must pay fees in accordance with regulations of the Ministry of Finance.

8.2 Fees:

- (a) The National Office of Industrial Property shall, when receiving Applications or conducting any other procedures, require the applicant to pay stipulated fees and shall check the vouchers proving payment of fees which are attached to Applications.
- (b) If fees are not paid in full, the National Office of Industrial Property shall send a notice thereon to the applicant. If the applicant pays the fees in full, the National Office of Industrial Property shall prepare two receipts, recording the relevant items for which the fees have been paid, one copy of which shall be attached to the Application in order to prove payment of fees.

8.3 Refund of fees:

- (a) Fees which have been paid shall be refunded in part or in total at the request of the applicant in the following cases:
  - (i) Fees were paid in excess of the amount stipulated in the Regulations;
  - (ii) Fees were paid but the corresponding procedures were not conducted.
- (b) When the National Office of Industrial Property agrees to refund fees, it shall prepare a receipt and record the item for which fees are being refunded and the method of refunding, and send the receipt to the applicant.
- (c) In a case where the National Office of Industrial Property does not agree to refund fees, it shall notify the applicant and state the reasons for the refusal.

## 9. Time-limits:

9.1 The time-limits stipulated in the *Law on Intellectual Property*, Decree 103 and this Circular shall be calculated in accordance with the provisions in Chapter 8 of Part 3 of the Civil Code.

9.2 The time-limits stipulated for an applicant and related parties to lodge, amend or supplement documents or to provide opinions may be extended by the same period as is stipulated for the fixed time-limit, on condition that the person requesting the extension of time lodges a written request prior to expiry of the fixed time-limit and pays any fees required by the regulations.

9.3 An applicant may request the National Office of Industrial Property to conduct procedures before the expiry of the stipulated time-limit on condition that a written request is made and that fees required by the regulations are paid. In a case where the National Office of Industrial Property does not so agree, it must provide notice to the applicant and specify its reasons.

## 10. Stipulated standard forms for protection titles:

10.1 The stipulated forms for Applications are set out in the Appendices to this Circular. Applicants must use these stipulated standard forms when preparing documentation to request conduct of procedures for registration of industrial property rights.

10.2 The stipulated standard forms for protection titles are also set out in the Appendices to this Circular, and the National Office of Industrial Property shall be responsible to retain copies of standard forms which have been issued in order to check the legality of protection titles which are used. Any change to the standard form of a protection title shall be made after there is a decision from the Minister of Science and Technology.

## 11. General procedures:



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All types of Applications for registration of industrial property rights shall be processed by the National Office of Industrial Property in accordance with the following order: receipt of application; examination of form; announcement that application is deemed proper, evaluation of contents (except for applications for registration of layout designs when procedures for examination of contents of the Application are not conducted); issuance (or refusal to issue) of a protection title; registration and announcement of the decision granting the protection title.

## **12. Filing and accepting applications:**

12. Applications may be filed at the National Office of Industrial Property or at any other locations for receipt of applications established by the National Office of Industrial Property. Applications may also be sent by registered post to the above locations.
- 12.2 After receiving an application, the National Office of Industrial Property shall check the list of documents stated in the Declaration and note any differences between the list of documents stated in the Declaration and the actual number of documents in the application so as to conclude whether or not to accept the application.
- (a) If the application contains the minimum documents in accordance with clause 7.1 above, staff shall accept the application and seal the Declaration with a number and certification of the date of filing of the application.
  - (b) If the application does not contain the minimum documents in accordance with clause 7.1 above, staff shall refuse to accept the application or send a notice from the National Office of Industrial Property to the person who lodged the application by post. The National Office shall not be required to return the documents but must refund fees and charges paid in accordance with clause 8 above.
  - (c) If the application is accepted, the National Office shall issue the applicant with one copy of the Declaration with certification of the date of filing of the application, the number of the application and the result of checking the list of documents, such copy of the Declaration to bear the full name and signature of the staff member accepting the application. The copy Declaration shall be valid as a replacement for a receipt for the application.

## **13. Examination of form of applications:**

### **13.1 Objective and contents of examination of form:**

Examination of the form of an application means an inspection of compliance with the provisions on the form of an application in order to reach a conclusion on whether or not the application is deemed proper.

A proper application shall be considered further and an improper application shall be refused for further consideration.

### **13.2. Proper applications:**

An application shall be deemed proper if it satisfies the requirements in clause 7 of this Circular and does not fall within one of the following cases:

- (a) The application is prepared in a language other than the Vietnamese language, except in the cases stipulated in clauses 7.3 and 7.4 of this Circular;
- (b) There is insufficient information in the Declaration about the author (in the case of an invention, layout design or industrial design) or about the applicant or the representative, or the applicant or representative has not signed and/or sealed it; or an application in the case of a mark lacks a list of goods and services; or an application in the case of a geographical indication lacks a list of products bearing the geographical indication;
- (c) There are grounds for confirming that the applicant does not have the right to file an application;



- (d) The application is filed inconsistently with the provisions in article 89 of the *Law on Intellectual Property*;
- (e) The application has deficiencies as stipulated in clause 13.3 below which render it improper and the applicant fails to rectify, or rectify satisfactorily, the deficiencies despite a request from the National Office of Industrial Property to do so;
- (g) There are grounds for immediate confirmation that the object stated in the application is clearly an object not eligible to be protected by the State as stipulated in articles 59, 64, 69, 73 and 80 of the *Law on Intellectual Property*.

With respect to an application with a number of objects, if the application falls within the cases stipulated in clauses 13.2(a) and 13.3(b) above and the deficiencies only relate to one or a number of the objects in the application, it shall be deemed partially improper (applicable to the deficient objects) but proper with respect to the remaining objects.

#### 13.3 Dealing with deficiencies of applications at stage of examination of form:

The National Office of Industrial Property shall notify the applicant if the application has the following deficiencies, and the applicant must rectify these deficiencies within a time-limit of one month from the date of the notice:

- (a) The application fails to satisfy the requirements as to form in clause 7.2 of this Circular (there are insufficient copies of any one type of mandatory document; the application lacks uniformity; the application fails to satisfy the requirements as to form of presentation; an application for registration of a mark fails to specify the type of mark, or lacks a descriptive section, or the results of classification of the group of goods or services is inaccurate, or there is no translation of data regarding priority right if any; the information about the applicant in different documents is inconsistent or has been erased or has not been correctly certified in accordance with regulations);
- (b) The fees for lodging and announcing the application have not been paid in full;
- (c) An application sent by post lacks a valid power of attorney.

#### 13.4 Determination of date of filing of application:

- (a) The date of filing an application shall be the date on which the National Office of Industrial Property seals receipt on the Declaration in accordance with clause 12.2(a) of this Circular;
- (b) With respect to international applications designating or selecting Vietnam, the date of filing of the application shall be the date on which the international application is filed.

#### 13.5 Determination of priority date:

- (a) If an application does not include a request for priority right, or if an application contains a request for priority right but the National Office of Industrial Property does not approve the request, the application shall be deemed not to have a priority date.
- (b) If an application includes a request for priority right, the priority date (or priority dates) shall be the date stipulated in the above request and approved by the National Office of Industrial Property.
- (c) Determination of priority date in the case of a request for priority on the basis of the first application filed in Vietnam shall comply with the principles in article 91 of the *Law on Intellectual Property* and the provisions in clauses (b), (c) and (dd) of article 10.1 of Decree 103-2006-ND-CP.

#### 13.6 Notice of approval of applications; and notice of refusal to approve applications:



- (a) If an application falls within the cases stipulated in clause 13.2 or has deficiencies as stipulated in clause 13.3 of this Circular, the National Office of Industrial Property shall send the applicant a notice of intention to refuse approval of the application. The notice shall specify the name and address of the applicant, the name of the industrial property representative service organization (if any), the name of the object stated in the application, the date of filing of the application and its number, and the reasons or deficiencies which have resulted in the application being deemed improper; and shall fix a time-limit of one month from the date of the notice for the applicant to provide its opinion or to remedy the deficiencies.
- (b) If an application is deemed proper, the National Office of Industrial Property shall send the applicant a notice approving the application as proper. The notice shall specify the name and address of the applicant, the name of the authorized representative (if any), information about the object stated in the application, the date of filing of the application and the priority date (if applicable). If a request for priority right is not approved then the notice shall specify the reasons.

13.7 Refusal to approve applications:

If the National Office of Industrial Property has sent the applicant a notice of intention to refuse approval of the application as stipulated in clause 13.6(a) above and the applicant does not remedy the deficiencies or remedy them satisfactorily, or does not provide an opinion on the intention to refuse approval or provides an unmeritorious opinion within the specified time-limit, then the National Office of Industrial Property shall issue an official notice of refusal to approve the application and shall, upon request from the applicant, refund all fees paid after the examination of form.

13.8 Time-limit for examination of form of applications:

- (a) The time-limit for examination of form shall be one month from the date of filing of an application.
- (b) If, during the course of examination of form of an application, the applicant either on its own initiative or at the request of the National Office of Industrial Property amends or supplements documents, the time-limit for examination of form shall be extended by the time taken for such amendment or supplementation.
- (c) Prior to expiry of the time-limit stipulated in clause 13.8(a) above, the National Office of Industrial Property must complete the examination of form and send a notice of results to the applicant in accordance with clause 13.6 above.

**14. Announcement of proper applications:**

14.1 Any application which has been approved as proper shall be announced by the National Office of Industrial Property in the Official Industrial Property Gazette and the applicant must pay the fee for announcement of the application.

14.2 Time-limit for announcement of applications:

- (a) Announcement of applications for registration of an invention:
  - (i) An application for registration of an invention shall be announced in the nineteenth month from the priority date or from the date of filing of the application (if there is no priority date) or within two months from the date on which the application is approved as proper, whichever date is the later.
  - (ii) An application for registration of an invention in accordance with the Patent Co-operation Treaty (hereinafter referred to as a *PCT application*) shall be announced within two months from the date on which the application is approved as proper after it has entered the National Stage.



- (iii) An application for registration of an invention which contains a request for early announcement shall be announced within two months from the date on which the National Office of Industrial Property accepts such request or from the date on which the application is approved as proper, whichever date is the later.
- (b) Other applications, namely applications for registration of a layout design, industrial design, mark or geographical indication shall be announced within two months from the date on which the application is approved as proper.

#### 14.3 Contents of announcement of applications:

The information relating to a proper application (including information about division of an application) to be announced in the Official Gazette shall comprise information about the form of the application as stipulated in the notice of approval of the application as proper, information about transfer of an application, information about division of an application (including the numbers of the original applications which were divided); Summary of an invention with drawings; drawings and photos of an industrial design; sample of a mark and list of goods and services; or summary of special nature of products bearing a geographical indication and name of such products.

#### 14.4 Access to detailed information about proper applications:

Any person may have access to information about the nature of objects stated in applications which are announced in the Official Gazette, or may request the National Office of Industrial Property to supply such information; and the person making the request must pay a fee in accordance with regulations.

### 15. Examination of contents of applications:

#### 15.1 Purpose and scope of examination of contents:

- (a) The purpose of examination of the contents of an application shall be to evaluate the possibility of protection of the object stated in the application in accordance with protection criteria and to determine the scope (quantity) of protection.
- (b) The procedures for examination of contents shall not apply to applications for registration of a layout design.

#### 15.2 Use of results of information from references:

- (a) When conducting an examination of contents of an application for registration of an invention or industrial design with priority right, the National Office of Industrial Property may use results of information from references and results of examination of the corresponding application filed overseas.
- (b) The applicant either on its own initiative or at the request of the National Office of Industrial Property may provide the National Office of Industrial Property with the following information to assist an examination of contents:
  - (i) In the case of an invention or industrial design, results of information from references or of examination of the applications filed overseas for the object stated in the application; copy patent or other certificate of protection already issued on the basis of the application filed overseas for the object stated in the application; documents relevant to the technical status for the object stated in an application in the case of an invention and issued to the applicant by an overseas patent authority; and other data.
  - (ii) In the case of a mark or geographical indication, data proving it is protected overseas or data explaining the process of its use, and other data.

#### 15.3 Requests to correct deficiencies, to explain contents of applications, and to provide data:



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- (a) The National Office of Industrial Property may request the applicant to explain contents of the application or to provide information within the scope of the nature of the object stated in the application if disclosure of full information is essential for the examination of contents.
- (b) Any amendment of or addition to deficient application documents must be made by the applicant itself. The National Office of Industrial Property shall not be permitted to make amendments or additions unless the applicant so requests in writing. The applicant must pay all fees for amendments and additions; and all data on amendments and additions shall be attached to the application and deemed an official part of the application.

15.4 Early termination of examination of contents:

- (a) An examination of contents shall be terminated early in the following circumstances:
  - (i) The application does not clearly express the nature of the object: the documents concerning the nature of the object, such as the Description, list of goods and services and so forth lack information to the extent that it is impossible to define the nature of the object, or the information about the nature of the object being an invention is unclear or abbreviated to the extent that it is impossible to define the object sought to be protected.
  - (ii) The object is inconsistent with the request for issuance of a certificate of protection for the industrial design, or the object is an object which is not protected by the State.
  - (iii) There are grounds for confirming with certainty that the object fails to satisfy one or more stipulated requirements for protection and therefore there is no need to examine the other criteria in order to reach a conclusion.
  - (v) The applicant fails to correct deficiencies, to explain contents of the application or to provide data as requested by the National Office of Industrial Property pursuant to clause 15.3 above.
  - (iv) The applicant requests termination of examination of contents or provides a declaration of withdrawal of the application.
- (b) The National Office of Industrial Property must notify an applicant of an early termination of examination of contents and the reasons within two months from the date of the notice asking the applicant to provide its opinion, unless the applicant requested the termination or provided a declaration of withdrawal of the application.

15.5 Re-establishment of examination of contents:

- (a) If an applicant replies to the notice of early termination of examination of contents with a written opinion refuting the reasons of the National Office of Industrial Property within the time-limit stipulated in clause 15.4(b) of this Circular, then the National Office of Industrial Property must consider such opinion.
- (b) If the opinion of the applicant is meritorious, the National Office of Industrial Property shall re-establish the examination of contents and the time granted for the applicant to refute the reasons of the National Office of Industrial Property shall not be included in the time-limit for the examination of contents. If the opinion of the applicant is unmeritorious, the National Office of Industrial Property shall officially terminate the examination of contents and issue a notice of refusal to grant a protection title; and the applicant shall have the right to lodge a complaint as stipulated in clause 22 of this Circular.

15.6 Contents of assessment:

- (a) The contents of an assessment shall comprise the following:
  - (i) An assessment of whether the object stated in the application is consistent with the request for issuance of that type of certificate of protection;
  - (ii) An assessment of the object pursuant to each protection criteria in turn;



- (iii) A check of the principles for lodging first applications.
- (b) The assessment in accordance with protection criteria shall be conducted for each object in turn (if the application contains a number of objects and uniformity has been ensured), and each object shall be assessed pursuant to each protection criteria in turn:
  - (i) In the case of an invention, the assessment shall be conducted for each point stated in the scope (claim) for protection in turn;
  - (ii) In the case of an industrial design, the assessment shall be conducted for the design of each product (if the application contains a set of products) and if the application contains a number of plans then the assessment shall be conducted for each plan in turn, starting from the plan initially mentioned in the application.
  - (iii) In the case of a mark, the assessment shall be conducted for each constituent of the mark applicable to each commodity or service in the list of goods and services.
- (c) The assessment of the objects stipulated in clauses 15.6(b) (i), (ii) and (iii) above shall be complete on concluding that the object satisfies or fails to satisfy the protection criteria:
  - (i) On finding reasons why the object fails to satisfy any protection criteria; or
  - (ii) On finding no reason at all why the object fails to satisfy any one protection criteria.
- (d) The National Office of Industrial Property must, before issuing the notice of results of the examination of contents stipulated in clause 15.7, check other applications with an earlier priority date received before commencing this examination of contents.

15.7 Work to complete examination of contents:

- (a) Notice of results of examination of contents:

At the latest on the last day of the time-limit stipulated in clause 15.8 below for examination of contents, the National Office of Industrial Property must send the applicant either of the following notices:

- (i) If an object stated in an application fails to satisfy the protection criteria, the notice of results of the examination of contents shall specify an intention to refuse issuance of a certificate of protection and the reasons for refusal and may also provide guidelines on amending [narrowing] the scope (quantity) of protection and fix a time-limit of two months from the date of the notice for the applicant to provide its opinion and to satisfy the protection criteria. The applicant may request the above time-limit be extended pursuant to clause 9.2 of this Circular.
- (ii) If an object satisfies the protection criteria but the application contains deficiencies, the notice of results of the examination of contents shall specify an intention to refuse issuance of a certificate of protection and the deficiencies, and fix a time-limit of two months from the date of the notice for the applicant to provide its opinion or to rectify the deficiencies. The applicant may request the above time-limit be extended pursuant to clause 9.2 of this Circular.
- (iii) If an object satisfies the protection criteria, or if in the cases stipulated in sub-clauses (i) and (ii) above the applicant has provided its opinion, satisfied the protection criteria or rectified deficiencies, then the notice of results of the examination of contents shall specify an intention to issue a certificate of protection and fix a time-limit of one month within which the applicant must pay the fee for issuance of a certificate of protection, for announcement of the decision to issue it, the registration fee and the fee for maintaining the validity of the certificate for the first year in the case of an invention. The applicant may request the above time-limit be extended pursuant to clause 9.2 of this Circular.



- (b) If at the expiry of the time-limit stipulated in clause 15.7(a) (i) and (ii) above the applicant fails to rectify or properly rectify deficiencies as requested and/or fails to refute or properly refute the opinion, then within the next 15 days the National Office of Industrial Property shall issue a notice refusing to issue a certificate of protection; and the applicant shall have the right to lodge a complaint as stipulated in clause 22 of this Circular.
- (c) If within the time-limit stipulated in clause 15.7(a) (iii) above the applicant fails to pay the fee for issuance of a certificate of protection, for announcement of the decision to issue it, and the registration fee, then within the next 15 days the National Office of Industrial Property shall issue a notice refusing to issue a certificate of protection.

In the case of an invention, if the applicant pays the fee for issuance of a certificate of protection, for announcement of the decision to issue it, and the registration fee but fails to pay the fee for maintaining the validity of the certificate for the first year within the time-limit stipulated in clause 15.7(a) (iii) above, then the National Office of Industrial Property shall still issue a certificate of protection but it shall be invalid immediately after the day of its issue.

#### 15.8 Time-limits:

- (a) Time-limits for examination of contents of an application shall be regulated as follows:
  - (i) Twelve months from the date of receipt of the request for examination of contents of an invention (if such request is lodged after the date of announcement of the application) or from the date of announcement of the application (if such request is lodged before the date of announcement).
  - (ii) Six months from the date of announcement of the application in the case of an industrial design, mark or geographical indication.
- (b) If, during the process of conducting the examination of contents of an application, the applicant on its own initiative or at the request of the National Office of Industrial Property amends or supplements documents, the time-limit for examination of contents of an application shall be extended by the time reserved for the applicant to so amend or supplement the application.

#### 16. Re-examination of applications:

##### 16.1 Re-examination of an application when objection is made after the National Office of Industrial Property has issued notice of intention to issue or to refuse to issue a certificate of protection:

- (a) An application shall be re-examined pursuant to article 117.4 of the *Law on Intellectual Property* in the following cases:
  - (i) The applicant submits a written opinion after the date of issuance of a notice of intention to issue or to refuse to issue the certificate of protection and before any decision issuing or refusing to issue a certificate of protection is made; or a third party provides a written opinion giving a good reason why it has been unable to provide its opinion previously;
  - (ii) The opinion stated in sub-clause (i) above is meritorious and is accompanied by evidence or references to reliable information sources;
  - (iii) The arguments and evidence in support of the opinion referred to sub-clause (i) above are different from those provided at previous procedural stages or they are arguments and evidence which the National Office of Industrial Property has not yet been able to reply to in accordance with clause 6.2 of this Circular.
- (b) The time-limit for re-examination of an Application shall be two-thirds of the time-limit specified for the initial examination in clause 15.8 of this Circular, although in complex cases this time limit may be extended but not in excess of the time-limit specified for the initial examination.
- (c) The procedures and contents of a re-examination shall be the same as those stipulated for an examination in clauses 15.6 and 15.7 of this Circular.



(d) Re-examination of an Application shall only be conducted once.

16.2 If the owner of a protection title requests narrowing of the scope of the industrial property rights pursuant to article 97.3 of the *Law on Intellectual Property*, the National Office of Industrial Property shall conduct a re-examination of the Application in accordance with the procedures and contents stipulated in clauses 15.6 and 15.7 of this Circular, on condition that the applicant pays the stipulated fees.

**17. Amendment, addition, division, conversion and assignment of applications:**

17.1 Amendment and addition of applications:

- (a) An applicant may, on its own initiative or at the request of the National Office of Industrial Property, amend or add to the Application prior to the National Office of Industrial Property issuing a notice refusing to accept the Application as proper, refusing to issue a certificate of protection, or issuing a decision granting a certificate of protection;
- (b) In the case of any of the following amendments or additions, the applicant must lodge a corrected version of the document and also an explanatory statement providing details of the amendments or corrections as compared with the original document which was filed:
  - (i) Description and Summary in the case of an invention;
  - (ii) Set of photos and drawings and Description in the case of an industrial design;
  - (iii) Sample of the mark and list of goods and services bearing the mark in the case of a mark;
  - (iv) Description of the particular or special characteristics of a product bearing a geographical indication, and map of the relevant area in the case of a geographical indication.
- (c) Any amendments of or additions to an Application may not extend the scope of protection beyond that disclosed in the contents of the originally filed Descriptive Section in the case of an invention or industrial design, or in the list of goods and services in the case of a mark, and must not change the nature of the object for which protection is sought in the Application. If an amendment or addition to an Application extends the scope (quantity) of protection or changes the nature of the object, then the applicant must file a new Application and recommence all procedures from the beginning;
- (d) An applicant may request correction of an error regarding the name and address of the applicant or author;
- (e) Requests for amendments and additions must be made in writing on standard form 01-SDD in Appendix B to this Circular. A request may be made to amend or add to the same item in a number of Applications, on condition that the applicant pays the stipulated fees;
- (f) If an applicant of its own initiative applies to amend or add to Application documents after the National Office of Industrial Property has approved the Application as proper, then amendments shall be implemented in accordance with clauses 13.2, 13.3 and 13.6 of this Circular. The amended or added items must be announced in the Industrial Property Gazette in accordance with clause 14 of this Circular and the applicant must pay the stipulated fees for the announcement.
- (g) Any amendment or addition to an Application, including change of an authorized person pursuant to a power of attorney, irrespective of whether the applicant of its own initiative makes the amendment or if the National Office of Industrial Property requests the amendment, must be made in writing and must be accompanied by a voucher proving payment of fees for the amendment or addition. Application files for an amendment or addition must comply with clauses 7, 10 and 13 of this Circular.

17.2 Division of applications:



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- (a) An applicant may on its own initiative or at the request of the National Office of Industrial Property divide an Application (to become one or a number of technical solutions in the case of an invention, to become one or a number of industrial designs, to become one or a number of components of a mark, or to become a part of goods and services in the case of an Application for registration of a mark, or may be divided into one or more Applications which shall be referred to as a divided Application).
- (b) A divided Application shall be given a new number but shall have the same filing date as the original Application or the same priority date as the original Application; and shall be announced in accordance with clause 16 of this Circular after there is notification of approval of the Application as a proper Application.
- (c) An applicant must pay fees in respect of each divided Application and also pay fees for procedures carried out in respect of the initial Application, but shall not be required to pay fees requesting entitlement to priority right. A divided Application shall be examined for form and shall thereafter be subject to the procedures which were not completed for the initial Application. A divided Application shall be re-announced and the applicant must pay fees for announcement of the divided Application after it is notified as being a proper Application.
- (d) The initial Application after it is divided shall be processed in accordance with the normal procedures and the applicant shall pay fees for amendment or addition.

#### 17.3 Conversion of applications:

- (a) Prior to the National Office of Industrial Property announcing refusal to issue a certificate of protection or prior to its issuing a decision granting a certificate of protection, the applicant may convert its Application for registration of an invention involving a request for a patent into an Application for registration of an invention involving a request for a utility solution certificate, or vice versa. In such a case, the applicant shall be liable to pay the stipulated fees for conversion.
- (b) After receiving a request for conversion, the National Office of Industrial Property shall continue to conduct the procedures applicable to the converted Application.
- (c) If a request for conversion is lodged outside the time-limit stipulated in sub-clause (a) above, it shall not be considered, but the applicant may lodge a new Application which shall take the same filing date and priority date if any as the initial Application.

#### 17.4 Assignment of applications:

Prior to the National Office of Industrial Property issuing one of the notices referred to in clause 17.19 (a) above, the applicant may request the National Office to record assignment of the Application to another person. Such request shall be made on standard form 02CGD stipulated in Appendix B to this Circular, and the provisions in clause 17.1 shall apply. An applicant must lodge data proving that the assignee satisfies the requirements on right to register.

### **18. Refusal to issue; issuance of certificates of protection and of copies of certificates of protection; and re-issuance of certificates of protection:**

#### 18.1 Refusal to issue certificates of protection:

An application for a certificate of protection shall be refused in the cases stipulated in clauses 1 and 2 of article 117 of the *Law on Intellectual Property*, and thereafter the National Office of Industrial Property shall conduct the procedures stipulated in clauses 3 and 4 of article 117.

#### 18.2 Issuance of certificates of protection:



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- (a) Within a time-limit of ten (10) days from the date on which an applicant pays all of the stipulated fees on time, the National Office of Industrial Property shall conduct procedures for issuance of a certificate of protection pursuant to article 118 of the *Law on Intellectual Property*.
- (b) If, after being issued with a certificate of protection, the owner considers the certificate contains an error, the owner shall have the right to request the National Office of Industrial Property to amend the certificate in accordance with clause 20.2 of this Circular.
- (c) As from the date of issuance by the National Office of Industrial Property of a decision to issue a certificate of protection, assignment of the application shall not be considered.

18.3 Issuance of copies of certificates of protection and re-issuance of certificates of protection:

- (a) If industrial property ownership is under general ownership, the National Office of Industrial Property shall only issue a certificate of protection to the first person in the list of applicants. The other owners may request the National Office of Industrial Property to issue a copy certificate of protection provided that they pay a fee for same.
- (b) In the following circumstances, an industrial property owner which has been issued with a certificate of protection (including a copy certificate of protection) may request the National Office of Industrial Property to re-issue a certificate of protection or copy certificate of protection provided that the owner pays a fee for same:
  - (i) Where the certificate of protection or copy certificate of protection has been lost;
  - (ii) Where the certificate of protection or copy certificate of protection has been damaged (torn, smeared or faded to the extent that it is no longer useable).
- (c) Application files requesting issuance of copies of certificates of protection or requesting re-issuance of certificates of protection:

Unless the Declaration includes a request for issuance of a copy certificate of protection, the written file requesting issuance of a copy certificate of protection or requesting re-issuance of a certificate of protection shall comprise:

- (i) Declaration requesting a copy certificate of protection or requesting re-issuance of a certificate of protection (prepared in accordance with sample form 03-PBVB in Appendix 3 to this Circular);
- (ii) Sample of the mark, or set of drawings and photos of the industrial design the same as were in the original certificate of protection;
- (iii) Power of attorney (if the application is filed by a representative);
- (iv) Voucher proving payment of fee for issuance of a certificate or copy certificate.
- (d) Processing requests for issuance of copies of certificates of protection or requesting re-issuance of certificates of protection:
  - (i) The National Office of Industrial Property must process a request to re-issue a certificate of protection or copy certificate of protection within one month of receipt of the request. If the request is considered proper the National Office of Industrial Property shall issue a decision re-issuing a certificate of protection or copy certificate of protection and record same in the relevant entry in the Register.
  - (ii) The re-issued certificate of protection or copy certificate of protection shall contain all the same contents as the original, and shall be marked as a re-issued certificate or copy certificate.



- (iii) If the request fails to satisfy the requirements stipulated in clause 18.3(c) above, the National Office of Industrial Property shall issue a decision refusing to re-issue a certificate of protection or copy certificate of protection.

## **19. National Industrial Property Register, Announcement of Decisions on Issuance of Certificates of Protection:**

### 19.1 National Industrial Property Register:

- (a) The National Industrial Property Register shall be the official and publicly available database of the State which records complete information on the legal status of industrial property rights which have been established. The Register shall include:
  - (i) The National Register of inventions;
  - (ii) The National Register of utility solutions;
  - (iii) The National Register of industrial designs;
  - (iv) The National Register of designs of semi-conducting closed circuits;
  - (v) The National Register of marks;
  - (vi) The National Register of geographical indications;
  - (vii) The National Register of transfer of industrial property rights;
  - (viii) The National Register of industrial property representatives.
- (b) Each of the above National Registers shall comprise items relating to each certificate of protection, each item to include:
  - (i) Information on the certificate of protection (number, date of issuance, name of object protected, scope of protection, duration of effectiveness, name and address of the owner of the certificate or of the organization or individual lodging the application for registration of a geographical indication, or of the author of the invention, layout design or industrial design).
  - (ii) Information on the application requesting issuance of the certificate of protection (number of application, date of filing, priority date, and name of any industrial property representative service organization).
  - (iii) All the information about amendments to the certificate of protection, the status of its validity (maintenance of validity, extension of validity, suspension of validity and revocation of validity); transfer of ownership of or of use right to the industrial property object; number and date of issuance and entity to whom the certificate or copy was issued or re-issued.
- (c) The National Register of transfer of industrial property rights shall contain details of each registered contract for transfer of industrial property rights as follows:
  - (i) Date and number of the certificate of registered contract for transfer of industrial property rights;
  - (ii) Full details of parties to the contract;
  - (iii) Full details of any changes to the contract;
  - (iv) Full details of any decision to compulsorily license an invention.
- (d) The National Register of industrial property representatives shall contain details of each industrial property representation service provider as follows:
  - (i) Full details of the industrial property representation service provider;



- (ii) Full details of personnel on the list of professionals at the industrial property representation service provider;
- (iii) Full details of any changes to the list above.
- (e) The above National Registers may be kept in paper, electronic or other form, and shall be accessible by the public on payment of a fee.

19.2 Announcement of decisions on issuance of certificates of protection:

- (a) All decisions on issuance of certificates of protection and on approval of international registration applications shall be announced in the Official Gazette of Industrial Property by the National Office of Industrial Property within two months from the date of the decision.
- (b) All the information in the decision shall be announced.

**20. Amendment or change of owner of a certificate of protection, narrowing the scope of protection, maintenance of validity, extension of validity of a certificate of protection:**

20.1 Recording change of name and address of the owner of a certificate of protection, narrowing the scope of protection and amendments to the description of particular characteristics/quality/well known characteristic of a product bearing a geographical indication, to the relevant area map of a geographical indication, amendments to the regulations on use of collective marks or the regulations on use of a certification mark:

- (a) Request to amend and/or change the owner of the certificate of protection:

The owner of a certificate of protection shall have the right to request the National office of Industrial Property to record changes in the certificate of protection as follows:

- (i) Change of name and address of the owner of the certificate of protection;
- (ii) Change of ownership of the certificate of protection (change of ownership due to inheritance, merger, division, joint venture, establishment of new legal entity of a joint owner, or of conversion of business form whether or not pursuant to a decision of a competent State body).

The applicant in the above cases must lodge fees for recording changes in the certificate of protection and for announcing the recording of the changes.

- (b) Request to narrow the scope of protection and amend the description of particular characteristics/quality/well known characteristic of a product bearing a geographical indication, of the relevant area map of a geographical indication, or to amend the regulations on use of a collective mark or the regulations on use of a certification mark:

A request to narrow the scope of protection as stipulated in article 97.3 of the *Law on Intellectual Property* may include the following cases:

- (i) Request to amend details without significantly altering the sample of the mark in the certificate of protection;
- (ii) Request to reduce the list of goods and services without altering the sample of the mark;
- (iii) Request to reduce the number of independent points or the (requested) scope of protection recorded in the patent for exclusive right to an invention or technical solution;
- (iv) Request to reduce the number of plans of an industrial design and so forth.
- (c) Written request to amend the certificate of protection:

Depending on the items requested to be amended as stipulated in clauses 20.1(a) and 20.1(b) above and in article 97.1 of the *Law on Intellectual Property*, the written request shall include:



- (i) Declaration requesting amendment of the certificate of protection prepared in accordance with sample form 01-SDVB in Appendix C to this Circular, specifying the request to change the name and address of the owner of the certificate of protection, or to change ownership of the certificate of protection, or to narrow the scope of protection or amend the description of particular characteristics/quality/well known characteristic of a product bearing a geographical indication, or to amend the relevant area map of a geographical indication, or to amend the regulations on use of a collective mark or the regulations on use of a certification mark;
  - (ii) The original certificate of protection;
  - (iii) Data verifying the change of name and address;
  - (iv) Data proving the change of ownership stipulated in clause 20.1(a)(ii) above;
  - (v) Data setting out in detail the changed contents;
  - (vi) Five samples of the corrected mark; five sets of photos or drawings of the corrected industrial design; two descriptions of the [amended] particular characteristics/quality/well known characteristic of the product bearing a geographical indication or of the [amended] relevant area map of the geographical indication; or two sets of the [amended] regulations on use of the collective mark or regulations on use of the certification mark;
  - (vii) Power of attorney (if the application is filed by a representative);
  - (viii) Voucher proving payment of fee.
- (d) Processing a request to amend a certificate of protection:

The National Office of Industrial Property shall examine an application for amendment of a certificate of protection within one month of receipt of the application. If the application is considered proper the National Office of Industrial Property shall carry out the amendment and announce it in the Official Gazette of Industrial Property.

#### 20.2 Request to correct errors in a certificate of protection:

- (a) The National Office of Industrial Property shall recover any certificate of protection which contains errors and issue a new certificate.
- (b) Fees must be paid by the owner only if the error was the owner's fault.

#### 20.3 Maintenance of validity of a certificate of protection for an invention:

In order to maintain the validity of a certificate of protection for an invention, the owner of the certificate of protection shall pay fees for the maintenance of validity within six months prior to expiry of the period of validity. The fees for maintenance of validity may be paid later than the time period stipulated above but not more than six months after expiry of the previous period of validity and the owner of the certificate of protection must pay an additional ten (10) per cent of the fees for each month of delay in payment.

#### 20.4 Extension of validity of a certificate of protection:

- (a) Patents for exclusive right to inventions and technical solutions, and certificates of protection of layout designs shall not be extended; but certificates of protection of industrial designs may be extended twice consecutively and each time for 5 years, and certificates of protection of marks may be extended many times and each time for 10 years.



- (b) The above Applications for extension should be filed before expiry of the certificate of protection; but if they are filed up to 6 months after that expiry date, the person requesting extension must pay the fee for extension plus ten (10) per cent of the fee for extension for each month of delay in payment.
- (c) The documentation for extension of validity of certificates of protection shall comprise:
  - (i) Declaration for extension of validity of the certificate of protection, prepared in accordance with sample form 02-GHVB in Appendix C to this Circular;
  - (ii) Original certificate of protection;
  - (iii) Document evidencing payment of fees for extension;
  - (iv) Power of attorney (if necessary).
- (d) The National office of Industrial Property shall consider applications for extension within one month of receipt of applications. The National office of Industrial Property shall issue a decision on extension, certify the certificate of protection, and register and announce in the Official Gazette of Industrial Property provided that applications do not fall in the following cases:
  - (i) Applications for extension which are improper or are not filed in compliance with the specified procedures;
  - (ii) The person requesting extension is not the owner of the certificate of protection.

**21. Termination and cancellation of validity of certificates of protection:**

21.1 Request for termination or cancellation of validity of a certificate of protection:

Requests for termination or cancellation of validity of a certificate of protection shall be implemented in accordance with articles 95 and 96 of the *Law on Intellectual Property* and the specific provisions in this Section.

21.2 Application file for termination or cancellation of validity of a certificate of protection:

- (a) Any one application file may request termination or cancellation of validity of a number of certificates of protection if the same reason applies to each, provided that the applicant must pay a fee for each certificate of protection referred to.
- (b) Application files for termination or cancellation of validity of certificates of protection shall comprise:
  - (i) Declaration requesting termination or cancellation of validity of a certificate of protection, prepared in accordance with sample form 04-CDHB in Appendix C to this Circular;
  - (ii) Evidence (if any);
  - (iii) Power of attorney (if the application is filed by a representative);
  - (iv) Explanatory statement;
  - (v) Voucher proving payment of fee.

21.3 Processing applications for termination or cancellation of validity of certificates of protection:



- (a) For a third party application for termination or cancellation of validity of a certificate of protection, the National Office of Industrial Property shall notify the third party opinion to the owner of the certificate and fix a time of two months from the date of the notice for the owner to provide its written opinion in reply. The National Office of Industrial Property may organize direct discussions between the third party and the owner.
- (b) The National Office of Industrial Property shall issue a decision on termination or cancellation of validity of a certificate of protection on the basis of articles 95.4 and 96.4 of the *Law on Intellectual Property*.
- (c) The owner and related parties shall have the right to lodge a complaint as stipulated in clause 22 of this Circular.
- (d) Any decision on termination or cancellation of validity of a certificate of protection shall be recorded in the Register and announced in the Official Gazette within two months from the date on which it is signed.

21.4 Termination or cancellation of validity of a mark which has been internationally registered:

- (a) For a third party application for termination or cancellation of validity of international registration pursuant to the Madrid Convention and the Madrid Treaty, the National Office of Industrial Property shall notify the owner via the International Office and fix a time of three months from the date of the notice for the owner to provide its written opinion.
- (b) Any decision on termination or cancellation of validity of international registration pursuant to the Madrid Convention and the Madrid Treaty shall be sent to the International Office for further procedures and announced in the Official Gazette.

**22. Complaints and resolution of complaints about procedures for establishment of industrial property rights:**

22.1 Right to complain, object of complaint and limitation period for lodging complaint:

The persons with the right to complain as prescribed in article 14.1 of Decree 103 within the limitation period prescribed in article 14.4 of Decree 103 shall have the right to conduct complaint procedures in respect of official notices and decisions by the National Office of Industrial Property concerning procedures for establishment of industrial property rights.

22.2 Complaint files:

- (a) Each complaint shall refer to only one notice or decision which is being complained of. Each complaint file may mention a number of notices or decisions if all of them have the same contents and provide the same reason for the complaint, provided that the complainant must pay a fee in accordance with regulations for each decision or notice which is being complained of.
- (b) Complaint files must include the following documents:
  - (i) Declaration of complaint, prepared in accordance with sample form 05-KN in Appendix C to this Circular;
  - (ii) Explanatory statement and evidence proving the reason for the complaint;



- (iii) Copy of the decision or notice which is being complained of;
  - (iv) Copy of the decision resolving the first complaint (in the case of a second complaint);
  - (v) Power of attorney (if the application is filed by a representative);
  - (vi) Voucher proving payment of complaint fee.
- (c) *Evidence* means documents (evidence in writing) or objects (evidence in the form of objects) used to prove or clarify the reasons for the complaint. Evidence must satisfy the following requirements:
- (i) Evidence in writing may be documents in a foreign language provided that a Vietnamese translation is provided, if the person authorized to resolve the complaint so requests;
  - (ii) Where evidence in writing is a document provided by an individual or organization without a seal or by a foreign individual or organization in the name of the underwriter which has given its name to the document, the signature must be certified by the public notary or a competent authority;
  - (iii) Where evidence is in the form of an object (a publication, a video and so forth), depending on each specific case, the country of origin of the object or of the information contained in the object must be specified, and the date when the object or information contained in the object was published or announced must also be clarified;
  - (iv) In the case of evidence in the form of objects, there must also be a document describing special points directly related to the contents of the complaint.

#### 22.3 Responsibilities of complainants:

Complainants must be honest when they provide evidence and they shall be liable for the consequences of providing false evidence.

#### 22.4 Withdrawal of complaints:

- (a) A complainant may provide notice of withdrawal of a complaint at any time. If notice of withdrawal of a complaint is provided by an industrial property representative service organization, the complainant must specify the right to withdraw in a power of attorney.
- (b) A withdrawn complaint shall be deemed not to have been lodged. The complainant shall not be entitled to return of the complaint file nor to a refund of any fee paid.

#### 22.5 Accepting jurisdiction over complaint files:

- (a) Within a time-limit of ten (10) days from the date of receipt of a complaint file, the person authorized to resolve the complaint shall check the file to ensure that it complies with the requirements as to form and then issue a notice to the complainant advising that jurisdiction has been accepted and the date of same, or advising that jurisdiction has not been accepted and the reasons therefor.
- (b) Jurisdiction shall not be accepted over complaint files in the following circumstances:
  - (i) The complainant does not have the right to lodge the complaint;



- (ii) The complaint was lodged outside the limitation period for lodging complaints;
- (iii) The complaint file fails to satisfy the requirements stipulated in clauses 22.1 and 22.2 above.

22.6 Related parties:

- (a) Where jurisdiction is accepted, the person authorized to resolve the complaint shall issue a notice on the contents of the complaint to persons with rights and interests which are directly affected (*related parties*), fixing a time-limit of one month from the date of the notice for such parties to provide their opinions.
- (b) Related parties shall have the right to provide information and evidence proving their arguments, and the person authorized to resolve the complaint shall be responsible to consider such information and evidence.
- (c) If a related party has not provided an opinion upon expiry of the above time-limit, the complaint shall be resolved on the basis of the opinion of the complainant.

22.7 Decision on resolution of complaint:

- (a) The person authorized to resolve the complaint shall rely on the arguments and evidence of the complainant and of related parties in order to issue a decision on resolution of the complaint within the time-limit stipulated in the law on complaints.
- (b) Prior to issuing a decision on resolution of the complaint, the person authorized to resolve the complaint shall issue a notice to the complainant and related parties about the arguments and evidence of the complainant and of related parties which have been used to resolve the complaint, stating the decision on resolution of the complaint.
- (c) The decision on resolution of a complaint shall contain the items stipulated by the law on complaints.

22.8 The decision on resolution of a complaint shall be announced in the Official Gazette within two months from the date on which it is signed.

22.9 Effectiveness of decisions resolving complaints:

Any procedures concerning industrial property which depend on the result of resolution of a complaint shall only be conducted on the basis of:

- (a) A decision resolving a first complaint if the complainant does not lodge a second complaint or institute administrative procedures within the stipulated time-limit;
- (b) A decision resolving a second complaint or a court decision if the complainant does not institute administrative procedures.

Section 2

**PROCEDURES FOR REGISTRATION OF INVENTIONS**

**23. Requirements applicable to an application for registration of an invention:**



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- 23.1 An application for registration of an invention (an application) must satisfy the general conditions stipulated in clauses 7 and 10.1 above and the particular conditions stipulated in this clause 23.
- 23.2 An application must specify whether the object to be protected is a product or process as stipulated in article 4.12 of the *Law on Intellectual Property*.
- 23.3 An application must ensure uniformity as stipulated in clauses 1 and 2 of article 101 of the *Law on Intellectual Property*. An application shall be deemed to satisfy this requirement when it:
- (a) Requests protection of a single object; or
  - (b) Requests protection of a group of objects which are related technically, expressing a single common creative intention and falling within the following circumstances:
    - (i) One object is used in order to create (to produce, manufacture or compound) another object;
    - (ii) One object is used in order to implement another object;
    - (iii) One object is used in order to use another object;
    - (iv) Objects all belong to the same pattern with the same function in order to ensure the same result is achieved.
- 23.4 If there are grounds (information or evidence) for doubting the reliability of information in the application, the National Office of Industrial Property may require the applicant to file, within one month of the date of such requirement, documents verifying such information and, in particular, documents verifying the lawful right to register if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file the application; contract for work assignment or labour agreement and so forth); and results of testing of pharmaceuticals listed in the Descriptive section on the human body, animals or plants (when the object to be protected is a pharmaceutical product used for humans, animals or plants).

23.5 The Declaration:

The Declaration, filed in two copies in accordance with standard form 01-SC in Appendix A to this Circular, shall specify the index classification of the technical solution to be protected in accordance with the latest list of international classifications of inventions (in accordance with the Strasbourg Agreement) announced by the National Office of Industrial Property in the Official Industrial Property Gazette. If the applicant has not made a classification or has made an inaccurate classification, the National Office of Industrial Property shall make a classification and the applicant shall pay a fee for classification services.

23.6 The Descriptive section:

The Descriptive section of the invention shall be filed in two copies and include a descriptive section of the invention and a descriptive section of the scope of protection.

- (a) The Descriptive section in the Description must give a full disclosure of the nature of the technical solution for which registration is requested. The Descriptive section must contain complete information to the extent that, based on it, any person with average knowledge in the relevant technical field would be able to carry out that solution. The Descriptive section must clarify the novelty, the degree of creativity or the inventive step, and the susceptibility of industrial application of the invention (if the certificate sought is a patent for exclusive right to the invention). The Descriptive section must clarify the novelty and the capability of applying the technical solution to be protected (if the certificate sought is a patent for exclusive right to the technical solution).

Any person with average knowledge in the relevant technical field means a person with average practical skills in the relevant technical field and with knowledge which is common knowledge in such technical field.



- (b) The contents of the Descriptive section shall comprise the following:
- (i) Name of the invention: summary of the object to be protected of registered (hereinafter referred to as the *object*) being a succinct name and not an expanded name or an advertisement;
  - (ii) Field in which the invention is to be used or to which the object is related;
  - (iii) Technical situation of the field in which the invention is to be used: Technical situation for the above field at the time of filing of the application (similar objects already known, if any);
  - (iv) Nature of the invention i.e the object, including specifying the signs (special characteristics) which bring about the object and showing the new signs (special characteristics) in comparison with similar technical solutions which are already known;
  - (v) Brief description of drawings attached (if any);
  - (vi) Detailed description of plans for implementing the object;
  - (vii) Example of implementation of the object, if necessary;
  - (viii) Benefits (effectiveness) which are able to be achieved upon use of the object, if any.
- (c) The (requested) scope of protection shall be used to determine the scope of industrial property rights to the invention. The request for protection must be presented briefly and clearly in conformity with the descriptive section and drawings, showing the new signs of the object, and must comply with the following provisions:
- (d) The Descriptive section must illustrate the request for protection in a complete way, that is, it must express the request by providing a list of all of the signs stated in the Descriptive section which are necessary and complete in order to be able to determine the object and in order to achieve the stated objective and in order to distinguish the object from other known objects.
  - (e) The technical signs within the (requested) scope of protection must be clear and accurate and accepted within such technical field.
  - (g) The request for protection shall not refer to the Descriptive section and drawings, except where a reference is made to sections which are not able to be described accurately in words, such as nucleotide and amino acid sequence listings, refraction charts and status flowcharts and so forth.
  - (h) If the application contains drawings, any signs in the request for protection may be followed by numeric identifiers placed in brackets, which shall not be deemed to restrict the request for protection.
  - (i) The request for protection should be expressed in two sections (but it is not mandatory): "restrictions section" and "differences section", in which the "restrictions section" shall include the name of the object and the signs which it has in common with the closest known object and shall be connected to the "differences section" by the expression "distinguishing points" or "points of special characteristics" or equivalent words. The "differences section" shall include the signs differentiating the object from the closest known object and these signs shall be combined with the signs in the "restrictions section" to make up the object for which protection is sought.



- (k) The request for protection may include one or a number of points; a request for protection including a number of points may be used to present the object for which protection is requested with an initial point (referred to as the *independent point*), and a subsequent point (or points) used to provide more detail of the independent point (referred to as *dependent points*); or to present the group of objects for which protection is requested with a number of independent points, each independent point presenting an object for which protection is requested within that group, and each such independent point may also have its dependent points.
- (l) Each point in the request for protection shall be numbered consecutively using Arabic numbers, with a full stop at the end.
- (m) A request for protection including a number of points used to present a group of objects must satisfy the following requirements: Independent points, presenting separate objects, may not refer to other points in the request for protection, unless such reference allows avoidance of a complete repetition of the contents of another point. Dependent points must be presented immediately after the independent point on which they depend.

#### 23.7 The Summary:

The Summary, to be filed in two copies, shall be used to announce briefly the nature of the invention (not to exceed one hundred and fifty (150) words). The Summary must express the main contents of the technical solution for the purpose of information, and may contain drawings and special formulae.

#### 23.8 Requirements with respect to applications for an invention concerning biotechnology:

- (a) In addition to the general requirements applicable to the Descriptive section of an invention stipulated in clause 23.6 above, in the case of any application for an invention for a gene sequence or part of a gene sequence, the Descriptive section must contain a list of the gene sequence presented in accordance with the World Intellectual Property Organization Standard ST.25 item 2(ii) (Standards for presentation of nucleotide and amino acid sequence listings in patent applications).
- (b) The National Office of Industrial Property may require an applicant to submit an electronic data file (such as a floppy disc or optical disc) in normal computer readable form, on which is recorded the nucleotide and amino acid sequence listings which are identical with the sequence listing written in the Descriptive section.
- (c) In the case of an invention about (or relating to) biological materials which is not able to be described, or described fully, to the extent that a person with average knowledge in the field of biotechnology would be able to carry out that invention or utility solution, such invention or utility solution shall be deemed to have been disclosed fully if:
  - (i) Sample biological materials were filed and retained at the authorized archiving body in accordance with clause 23.9 of this Circular no later than the day on which the application is filed;
  - (ii) The Descriptive section contains clear and essential information on the special characteristics of the biological materials which the applicant may have; and
  - (iii) The declaration specifies the body retaining the biological materials and the archiving symbol for the sample biological materials issued by the body where they were filed and retained, and data confirming this information is filed with the National Office of Industrial Property within a time-limit of sixteen (16) months from the priority date or no later than the date of filing of a request for early announcement of the application (if any), except in the case in clause 23.9(d) below of this Circular.



- (d) If the applicant is not the person filing biological materials for retention, the name and address of the latter person must be stated in the Declaration, and documents confirming lawful use of the biological materials must be filed with the National Office of Industrial Property within a time-limit of sixteen (16) months from the priority date or no later than the date of filing of a request for early announcement of the application (if any) whichever is the later, except in the case in clause 23.9(d) below of this Circular.

#### 23.9 Filing biological materials for retention:

- (a) The objective of filing sample biological materials for retention is to service examination of the contents of an application for registration of an invention concerning biological materials.
- (b) Sample biological materials must be filed with the authorized body for retention no later than the date of filing of an application for registration of an invention concerning biological materials.
- (c) The body for receipt and retention of sample biological materials in Vietnam or overseas is the body appointed or recognized by the Ministry of Science and Technology.
- (d) Filing biological materials for retention and confirming data on international applications in respect of inventions must comply with the Treaty.
- (e) If sample biological materials were filed at a body overseas, then the National Office of Industrial Property may request the applicant to also file them at a body for receipt and retention of sample biological materials in Vietnam if considered necessary to clarify the object requested to be protected or to satisfy third party requests to access such object.

#### 23.10 Additional provision on application for registration of an invention relating to pharmaceutical products:

In addition to the general requirements applicable to the Descriptive section of an invention stipulated in clause 23.6 above, in the case of any application for registration of an invention relating to pharmaceutical products, the Descriptive section must contain the results of clinical testing and the pharmacological effects of the product, being at least the following information:

- (a) Chemicals and compounds used;
- (b) Testing method used;
- (c) Results of clinical testing;
- (d) Correlation between results of clinical testing and pharmacological effects of the product on the one hand and actual application of the product during patient diagnosis and treatment on the other hand.

#### 23.11 Additional provision on application for registration of an invention relating to a gene bank or traditional knowledge:

In addition to the general requirements applicable to any application for registration of an invention stipulated in clauses 23.1 to 23.6 above, in the case of any application for registration of an invention directly based on a gene bank or traditional knowledge, there must be an explanation from the author or applicant about the gene bank or traditional knowledge which the author or applicant accessed. If the author or applicant is unable to verify such gene bank or traditional knowledge which the author or applicant accessed, then the author or applicant must so stipulate and shall be liable for the truthfulness of such statement.

### 24. Examination of form and announcement of application for registration of an invention:

Procedures for examination of form and announcement of an application for registration of an invention shall be implemented in accordance with clauses 13 and 14 of this Circular.



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## 25. Examination of contents of application for registration of an invention:

### 25.1 Request for examination of contents of application for registration of an invention:

- (a) An applicant or any third party may request the National Office of Industrial Property to [substantively] examine the contents of an application for registration of an invention pursuant to article 113 of the *Law on Intellectual Property* as follows:
  - (i) The request shall be in accordance with standard form 03-YCTD in Appendix B to this Circular, or it shall be made in the form of a Declaration if made by the applicant and made at the same time as filing the application.
  - (ii) The request must be made within a time-limit of forty two (42) months from the priority date of an application for a patent for an invention, or thirty six (36) months from the priority date of an application for a patent for a utility solution. If there is a proper reason, this time-limit for filing of a request for examination of contents may be extended but by no more than six months.
  - (iii) Any person requesting an examination of contents of an invention shall pay a fee for references and a fee for examination of contents in accordance with regulations. If the request for examination of contents is filed later than the stipulated time-limit, the person making the request shall pay an additional extension fee (for late filing) in accordance with clause 20.4(b) above. If the fee for references and the fee for examination of contents are not paid, the request made to the National Office of Industrial Property to conduct an examination of contents shall be deemed invalid.
- (b) Requests for examination of contents of an invention which are filed after the announcement of the application shall be announced in the Official Industrial Property Gazette in the second month from the date of receipt of such written request and shall be notified to the applicant (if the request was made by a third party).

Requests for examination of contents of an invention which are filed prior to the announcement of the application shall be announced at the same time as the relevant application.

- (c) If a request for examination of contents is not filed within the time-limit stipulated in clause 25.1(a) above, the application shall be deemed to have been withdrawn upon expiry of such time-limit.

### 25.2 Order of procedures for examination of contents:

The order of procedures for an examination of the contents of an application for registration of an invention shall be implemented in accordance with clause 15 of this Circular.

### 25.3 Assessment of conformity of object stated in the application with the type of certificate of protection:

- (a) The object stated in the application for registration of an invention shall be deemed not to be a technical solution if it is not a product or process as stipulated in clause 25.3(b) below.
- (b) A technical solution is capable of protection if it is a collection of information on technical methods or means to resolve a specified issue.

### 25.4 Assessment of whether the invention is susceptible of industrial application as stipulated in article 62 of the *Law on Intellectual Property*:

- (a) The technical solution stated in the application shall be deemed capable of implementation if:
  - (i) Basic information plus technical instructions are explained clearly to the extent that, based on them, any person with average knowledge in the relevant technical field would be able to create, produce, use, exploit or implement such technical solution;
  - (ii) The creation, production, use, exploitation or implementation can be repeated many times with the same result;



- (b) The technical solution stated in the application shall be deemed incapable of implementation if:
  - (i) The basic information plus technical instructions are contrary to scientific principles;
  - (ii) The object to be protected contains elements without any technical connection with each other;
  - (iii) The object to be protected contains internal contradictions;
  - (iv) The creation, production, use, exploitation or implementation cannot be repeated many times with the same result;
  - (v) Any person implementing such technical solution would have to have special knowledge which is not able to be transferred to others;
  - (vi) Results of various occasions of implementation are inconsistent;
  - (vii) Results of various occasions of implementation are inconsistent with results stated in the application;
  - (viii) There are not most important instructions to implement such technical solution;
  - (ix) Other legitimate reasons.

25.5 Assessment of novelty of the invention as stipulated in article 60 of the *Law on Intellectual Property*:

- (a) Minimum mandatory information sources:

In order to assess the novelty of a technical solution stated in an application, reference must be made to at least the information in the following mandatory sources (without limiting the reference to such minimum sources):

- (i) All other applications accepted by the National Office of Industrial Property with the same classification index number as that of the object stated in the application, calculated to the sub-class stratification index number (third class index number) and which have an announcement date earlier than the lodging or priority date of the application under consideration;
- (ii) Applications for inventions or/and patents which other organizations and countries have announced/granted within twenty five (25) years prior to the lodging or priority date stated in the application and which are archived in the patents database and other sources at the National Office of Industrial Property, with the scope and reference stipulated in clause (i) above.

In necessary and possible cases, reference shall be extended to scientific reports and to reports on the results of research programs and topics and so forth, within the same technical field which have been proclaimed and archived at the National Centre for Scientific and Technological Information.

- (b) Objective of references:

The objective of referring to information shall be in order to find technical solutions with a similar or overlapping nature to the technical solution stated in the application, in which:

- (i) Two technical solutions overlap if all of the basic signs (special characteristics) overlap or are equivalent to each other (are able to be replaced by each other);
- (ii) Two technical solutions are similar if the majority of the basic signs (special characteristics) overlap or are equivalent to each other (are able to be replaced by each other);



- (iii) "Confronting technical solution" means the nearest overlapping or similar technical solution to the technical solution stated in the application;
- (iv) "Confronting data" means data describing the confronting technical solution or proving it has been publicly announced.
- (c) Report on references:
  - (i) The results of reference to information shall be expressed in a reference report, specifying the field in which reference was made, the scope of reference and the results found (statistics on the confronting solution identified, details on overlapping signs and on information sources, the date on which any relevant information was announced) and the report shall bear the full name of the person preparing it (the person having conducted the reference).
- (d) Method of assessing novelty of a technical solution:

In order to assess the novelty of the technical solution stated in an application, it shall be necessary to conduct a comparison of the basic signs (special characteristics) of the technical solution with the basic signs of the confronting technical solution identified during the course of reference to information, in which:

- (i) Basic signs of a technical solution may be its special characteristics regarding function, utility, structure, interrelation, composition, and so forth, which together with other basic signs create a necessary and complete collection in order to determine the nature (contents) of the object;
  - (ii) The basic signs of the technical solution stated in the application for a certificate of protection shall be expressed in the request for protection of the invention or utility solution;
  - (iii) The basic signs of the technical solution stated in the other documents shall be expressed and identified in documents describing or presenting the actual appearance of such technical solution.
- (e) Conclusion on novelty of a technical solution:

Corresponding to a point in the request for protection, the technical solution stated in the application shall be deemed to be new in comparison with the world technical level if:

- (i) A confronting technical solution is not identified during the course of reference to information; or
- (ii) A confronting technical solution is identified but the technical solution stated in the application has at least one basic sign which does not appear in the confronting technical solution (which sign shall be referred to as a *distinct basic sign*).

#### 25.6 Assessment of inventive nature of an invention as stipulated in article 61 of the *Law on Intellectual Property*:

- (a) Minimum mandatory information sources:

In order to assess the inventive nature of an invention, reference must be made to at least the information in the mandatory sources referred to in clause 25.2(a) above.

- (b) Assessment of level of creativity of technical solutions:



An assessment of the level of creativity of the technical solution stated in an application shall be conducted by assessing the signs/distinct basic signs stated in the request for protection in order to deliver a conclusion:

- (i) Whether or not the signs/distinct basic signs are deemed to have been disclosed in the minimum mandatory information sources; and
- (ii) Whether or not the collection/distinct basic are deemed self-evident to any person with average knowledge in the relevant technical field.

When assessing in turn each point in the request for protection, the technical solution shall be deemed to be creative if the inclusion of the distinct basic signs into the collection of basic signs of the technical solution is the result of a creative act and not a self-evident result of average knowledge in the relevant technical field.

- (cc) In the following circumstances (but not only in such circumstances), when assessing each point in the request for protection, a technical solution shall be deemed not to be creative:
  - (i) If the collection of distinct basic signs is self-evident (any person with average knowledge in the relevant technical field would know that, in order to implement the stated function or in order to achieve the stated objective, it is necessary to use a collection of such signs, and *vice versa* that use of that collection of signs would of necessity achieve the objective or exercise the relevant function);
  - (ii) If the collection of distinct basic signs has already been disclosed in an identical or equivalent form in one or some other technical solutions which is or are known from the minimum mandatory information sources;
  - (iii) If the technical solution is a simple combination of known technical solutions with functions, objectives and effects which are also the simple combination of functions, objectives and effects of known technical solutions.
- (d) In this clause:
  - (i) Two signs shall be deemed identical if they have the same nature;
  - (ii) Two signs shall be deemed equivalent to each other if their nature is equivalent, if they have the same objective and the same way of achieving their basic objective.

#### 25.7 Check of "First to file" principle as stipulated in article 90 of the *Law on Intellectual Property*:

- (a) Minimum mandatory information sources:

In order to check the "First to file" principle, reference must be made to at least the information in the following mandatory sources (without limiting the reference to such minimum sources):

All other applications accepted by the National Office of Industrial Property with the same classification index number as that of the object stated in the application, calculated to the sub-class stratification index number (third class index number) and which have an announcement date earlier than the lodging or priority date of the application under consideration; and all such other applications not yet announced or with an announcement date earlier than the lodging or priority date of the application under consideration;

- (b) The objective of references is to find applications for the same invention which have an earlier lodging or priority date;



- (c) If the answer to the above is positive, then a certificate may only be issued for a valid application with the earliest lodging or priority date;

25.8 Notice of results of examination of contents:

Notice of results of examination of contents shall be implemented in accordance with clause 15.7(a) of this Circular.

**26. Issuance, registration and announcement of patent [for exclusive right] of the invention or patent [for exclusive right] of the technical solution.**

Procedures for issuance, registration and announcement of a patent [for exclusive right] of the invention or patent [for exclusive right] of a technical solution shall be implemented in accordance with clauses 18 and 19 of this Circular.

**27. Processing international applications in respect of inventions:**

27.1 The body authorized to receive international applications in Vietnam shall be the National Office of Industrial Property.

The National Office of Industrial Property shall have the responsibility:

- (a) To receive international applications originating from Vietnam;
- (b) To collect fees and notify the applicant to transfer fees to the International Office and the International Reference Agency as stipulated in the PCT Treaty on Inventions (hereinafter referred to as *the Treaty*);
- (c) To verify that payment of the specified fees was on time;
- (d) To check and process international applications originating from Vietnam as stipulated in the Treaty;
- (e) To determine the object to be protected: if the object to be protected in an application is a national secret, the subsequent procedures shall not be carried out and fees shall be refunded to the applicant except for fees for forwarding and copying the international application;
- (g) To send one set of international applications originating from Vietnam to the International Office and one copy (for reference) to the International Reference Agency;
- (g) To send and receive correspondence from the applicant and international agencies.

27.2 Language:

International applications originating from Vietnam submitted to the National Office of Industrial Property shall be made in English, and there must be three copies of each application. If the number of copies is insufficient, the National Office of Industrial Property shall make up the copies and charge the fees to the applicant.

27.3 International Reference Agency and International Preliminary Examination Agency:

For international applications originating from Vietnam, the competent International Reference Agencies and International Preliminary Examination Agencies shall be the Patent Agencies, the Industrial Property Offices or the Intellectual Property Offices of Australia, Austria, the Russian Federation, Sweden and Korea and the European Patent Office.



#### 27.4 International applications designating Vietnam:

- (a) If Vietnam is designated in an international application, the National Office of Industrial Property shall be the designated agency. In this case, in order to enter the National Stage, within thirty one (31) months from the priority date, the applicant must submit to the National Office of Industrial Property the following:
  - (i) Declaration for registration of the invention, prepared in accordance with standard form 01-SC in Appendix A to this Circular;
  - (ii) Copy international application (where the applicant requests to enter the National Stage prior to the date of international announcement);
  - (iii) Vietnamese translation of the international application including the Description, Descriptive section, request for protection, notes to drawings and Summary (the document announced or the original already filed if the document has not yet been announced, and the amended document and explanatory statement of the amendment if the application was amended in accordance with article 19 of the Treaty);
  - (iv) The national fees.
- (b) An international application filed with the National Office of Industrial Property within six months of expiry of the time-limit stipulated in clause 27.4(a) above may be accepted on condition that the applicant pays the specified fees.

#### 27.5 International applications selecting Vietnam:

- (a) If Vietnam is selected in an application for international preliminary examination, the National Office of Industrial Property shall be the selected agency. In this case, and if Vietnam is selected within nineteen (19) months from the priority date, in order to enter the National Stage, within thirty one (31) months from the priority date, the applicant must submit to the National Office of Industrial Property the following:
  - (i) Declaration for registration of the invention prepared in accordance with standard form 01-SC in Appendix A to this Circular;
  - (ii) Vietnamese translation of the international application including the Description, Descriptive section, request for protection, notes to drawings and Summary (the document announced or the original already filed if the document has not yet been announced, and the amended document and explanatory statement of the amendment if the application was amended in accordance with article 19 or article 343.2(b) of the Treaty);
  - (iii) Vietnamese translation of the appendices to the report on international preliminary examination (if there is a request to examine the contents of the application);
  - (iv) The national fees.
- (b) An international application filed with the National Office of Industrial Property within six months of expiry of the time-limit stipulated in clause 27.5(a) above may be accepted on condition that the applicant pays the specified fees.

#### 27.6 Request for entitlement to priority right:



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In order to enjoy the priority right, the applicant must re-confirm such right in the Declaration, pay a fee for application for entitlement to priority right upon request by the National Office of Industrial Property, and file Vietnamese translations of the documents and necessary data already filed with the International Office pursuant to Rule 17.1(a) of the Regulations on Implementation of the Treaty.

Processing a request for entitlement to priority right in a PCT application must comply with the Treaty and the Regulations on Implementation of the Treaty.

#### 27.7 Processing international applications in the National Stage:

##### (a) Amendment and supplementation of documents in National Stage:

In accordance with Rule 51<sup>bis</sup> of the Regulations on Implementation of the Treaty, an applicant shall submit the power of attorney and the certificate of transfer of the right to file the application in the International Stage (if any) within thirty four (34) months from the priority date.

In accordance with articles 28 and 41 of the Treaty and Rules 52.1(b) and 78.1(b) of the Regulations on Implementation of the Treaty, in the National Stage, the applicant may amend and supplement application documents as stipulated in clause 31 of this Circular. Also, immediately into the National Stage, the applicant may amend and supplement the Description in accordance with clause 17 of this Circular.

The documents amended and supplemented which are submitted to the National Office of Industrial Property by the applicant must be in Vietnamese.

##### (b) Time to begin National Stage:

The time of processing international applications designating Vietnam or selecting Vietnam in the National Stage shall begin on the first day of the thirty second month from the priority date, if the applicant does not provide a written request for the application to be dealt with earlier.

##### (c) Examination of international applications:

International applications after they have entered the National Stage shall be examined with respect to form and content in accordance with the procedures stipulated for normal applications for registration of inventions. If the applicant makes a written request for early examination and pays the specified fees, then there shall be an early examination of the international application in accordance with article 23.2 of the Treaty and clause 27.7(b) of this Circular.

##### (d) International applications deemed to be withdrawn:

In addition to the cases deemed to be withdrawn as stipulated in the PCT Treaty and the Regulations on Implementation of the Treaty, international applications designating or selecting Vietnam shall be deemed to be withdrawn where the national fee is not paid to the National Office of Industrial Property or where there is no Vietnamese translation after expiry of the stipulated time periods.

#### 27.8 Fees:

- (a) The applicant in international applications which enter the National Stage must pay fees in accordance with the provisions applicable to applications for registration of inventions filed directly in Vietnam.



- (b) The applicant in international applications originating from Vietnam must pay fees in accordance with the rates and procedures specified in the Regulations on Implementation of the PCT Treaty and the regulations of the Ministry of Finance.

### Section 3

## PROCEDURES FOR REGISTRATION OF LAYOUT DESIGNS

### 28. Requirements applicable to an application for registration of a layout design:

28.1 An application for registration of a layout design (an application) must satisfy the general conditions stipulated in clauses 7 and 10.1 above and the particular conditions stipulated in this clause 28.

28.2 Documents, samples and information identifying the layout design to be registered shall include 4 sets of photos or drawings of the design; 4 samples for production if the layout design is to be commercially exploited and an explanatory statement of same.

28.3 An application must ensure uniformity as stipulated in clause 1 of article 101 of the *Law on Intellectual Property*.

28.4 If there are grounds (information or evidence) for doubting the reliability of information in the application, the National Office of Industrial Property may require the applicant to file, within one month of the date of such requirement, documents verifying such information and, in particular, documents verifying the lawful right to register if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file the application; contract for work assignment or labour agreement and so forth).

28.5 The Declaration:

The Declaration shall be filed in two copies in accordance with standard form 01-SC in Appendix A to this Circular.

28.6 Requirements for photos and drawings of a layout design:

- (a) Compliance with clause 28.6(b), (c) and (d) below.
- (b) Drawings applicable to each appropriate circuit; and photos and drawings from every perspective for production of each circuit;
- (c) Sets of photos and drawings must be lodged in paper form and may be accompanied by electronic data files as well;
- (d) Form of data:
  - (i) Sets of photos and drawings must be photos and drawings of each layer of the layout design with the symbol for each layer and dimensions of each circuit;
  - (ii) Sets of photos and drawings must be on the same scale, enlarged to no more than 20 times the actual size;
  - (iii) Photos and drawings may be on A4 size paper or larger so long as it can be folded to A4 size.
  - (iv) Photos and drawings must be clear and clean.

28.7 Requirements for sample integrated circuits produced from the layout design:

- (a) Sample integrated circuits must be fully compatible with the layout design in the application;



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- (b) If the layout design has been commercially exploited anywhere in the world prior to lodging the application, the sample integrated circuits commercially exploited must be lodged.

28.8 Requirements for the description of a sample integrated circuit produced from the layout design:

- (a) Name and symbol being a combination of letters and/or numbers used to distinguish it from others on the market;
- (b) Description of basic functions of the sample integrated circuit;
- (c) Description of basic structure of the sample integrated circuit (such as bipolar structure or MOS, or Bi-MOS etc);
- (d) Description of production technology (such as TTL, DTL, ECL, ITL, CMOS, NMOS, PMOS or other technology);
- (e) Description of main characteristics to distinguish it from other semi-conducting circuits on the market at the time of lodging the application or at the time of first global commercial exploitation, whichever is earlier.

**29. Protecting confidentiality of information of application for registration of a layout design:**

The applicant may request protection of confidentiality of information in its application for registration of a layout design as follows:

29.1 Maximum permitted level of confidentiality of information:

- (a) If the layout design has not been commercially exploited, 50% of the total acreage [surface] of each layer;
- (b) If the layout design has been commercially exploited, two layers in each group of five layers calculated from above to below.

29.2 The applicant must make the request for protection of confidentiality of information in accordance with guidelines of the National Office of Industrial Property and provide instructions about the data or material containing confidential information.

29.3 The data or material containing confidential information must be submitted separately:

- (a) On microfilm or similar form with data explaining the measurements of computer drawings; or
- (b) On an electronic file;
- (c) On photos and drawings with some invisible sections [sections containing confidential information] but the basic characteristics of the layout design must be visible.

29.4 The National Office of Industrial Property must protect confidentiality of information pursuant to a request made in accordance with clause 29.1.

**30. Examination of form and announcement of application for registration of a layout design:**

30.1 Procedures for examination of form and announcement of an application for registration of a layout design shall be implemented in accordance with clause 13 and this clause 31.

30.2 Notice of results:

- (a) If an application falls within the cases stipulated in clause 13.2 or has deficiencies as stipulated in clause 13.3 of this Circular, the National Office of Industrial Property shall conduct procedures stipulated in clause 13.6(a).



- (b) If an application is deemed proper, the National Office of Industrial Property shall send the applicant a notice approving the application as proper. The notice shall specify the name and address of the applicant, information about the object stated in the application, and state that a certificate of protection may be issued if no third party objects within 3 months from the date of announcement of the layout design in the Gazette.

30.3 Refusal to approve applications:

If the National Office of Industrial Property has sent the applicant a notice of intention to refuse approval of the application as stipulated in clause 13.6(a) above and the applicant does not remedy the deficiencies or remedy them satisfactorily, or does not provide an opinion on the intention to refuse approval or provides an unmeritorious opinion within the specified time-limit, then the National Office of Industrial Property shall issue an official notice of refusal to approve the application and shall, upon request from the applicant, refund all fees paid after the examination of form.

**31. Announcement of application for registration of a layout design:**

31.1 Any application which has been approved as proper shall be announced in accordance with clause 14 and this clause 31.

31.2 Access to detailed information about applications for registration of a layout design:

- (a) Any person may have access to information about the nature of objects stated in applications which are announced in the Official Gazette, except for the case stipulated in clause 29 above;
- (b) Only a competent State body conducting procedures to rescind the effective term stipulated in the certificate of protection or conducting procedures to deal with infringements regarding a layout design [with sections containing] confidential information shall be permitted to access confidential information on a layout design.

**32. Issuance, registration and announcement of decision issuing certificate of registration of a layout design:**

32.1 Notice of intention to issue a certificate of registration of a layout design:

If no third party objects within 3 months from the date of announcement of the layout design in the Gazette or if a third party objects but there is a conclusion that the objection is not legitimate, then the National Office of Industrial Property shall send the applicant a notice of intention to issue a certificate of registration of a layout design and fix a time-limit of one month for payment of fees for announcing, registering and issuing the certificate.

32.2 Procedures for issuance, registration and announcement of a decision issuing a certificate of registration of a layout design shall be implemented in accordance with clauses 18.2 and 19 of this Circular.

32.3 Refusal to issue a certificate of registration of a layout design:

If a third party objects within 3 months from the date of announcement of the layout design in the Gazette and there is a conclusion that the objection is legitimate, then the National Office of Industrial Property shall refuse to issue a certificate of registration of a layout design and procedures shall be implemented in accordance with clause 18.1 of this Circular.

Section 4

**PROCEDURES FOR REGISTRATION OF INDUSTRIAL DESIGNS**

**33. Requirements applicable to an application for registration of an industrial design:**



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- 33.1 An application for registration of an industrial design (an application) must satisfy the general conditions stipulated in clauses 7 and 10.1 above and the particular conditions stipulated in this clause 33.
- 33.2 An application must ensure uniformity as stipulated in clauses 1 and 3 of article 101 of the *Law on Intellectual Property*. An application shall be deemed to satisfy this requirement when it:
- (a) Requests protection of the industrial design of one single product; or
  - (b) Requests protection of the industrial design of a group of products within one set of products in which all products have the same industrial design; or
  - (c) Requests protection of the industrial design of one single product together with one or more versions of such industrial design.
- 33.3 Requirement to provide information:
- (a) If there are grounds (information or evidence) for doubting the reliability of information in the application, the National Office of Industrial Property may require the applicant to file, within one month of the date of such requirement, documents verifying such information and, in particular, documents verifying the lawful right to register if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file the application; contract for work assignment or labour agreement and so forth).
  - (b) If there are grounds for suspecting the industrial design contains other objects such as trademarks, commercial names, and so forth, the National Office of Industrial Property may require the applicant to file, within one month of the date of such requirement, documents verifying ownership or right to use such trademarks, commercial names, and so forth.
- 33.4 Requirements applicable to the Declaration:
- The applicant shall lodge two sets of the Declaration in accordance with sample form 03-KDCN in Appendix A to this Circular. The Declaration shall also specify the index for classification of the industrial design to be protected in accordance with the international index for classification of industrial designs (the Locarno Agreement). If the applicant has not made a classification or has made an inaccurate classification, the National Office of Industrial Property shall make a classification and the applicant shall pay a fee for classification services.
- 33.5 Requirements applicable to the Description of the industrial design:
- The applicant shall lodge one set of the Description comprising the following:
- (a) Name of the industrial design being the name of the main product bearing the industrial design in ordinary words and not containing symbols, explanations, commercial instructions or advertising;
  - (b) Field in which the industrial design is used being the specific use field of the main product bearing the industrial design, and the use purpose;
  - (c) Closest known industrial design of the same type of product mentioned in the application which has the least difference from the one under consideration, and widely known prior to the date of lodging or priority date, with information source on public disclosure of such closest known industrial design;
  - (d) List of photos or drawings;
  - (e) Descriptive section of the industrial design satisfying the following requirements:



- (i) The Descriptive section shall present all of the special shaping features which have been created and which express the nature of the industrial design for which protection is requested, showing the special shaping features newly created by the author and their differences from the closest known industrial design set out in clause 33.5(c) above, and the Descriptive section must be in conformity with the photos or drawings;
- (ii) The shaping features which have been created and for which protection is requested shall be presented in the following order: the cubic features and/or the linear features and/or the correlation between the above features and/or colours (if any);
- (iii) If the industrial design has different use states (for example it has a lid valve or can be folded up or closed etc.), then the Descriptive section must describe the product in those various use states;
- (iv) If the industrial design for which protection is requested includes a number of plans, the Descriptive section must explain them fully and show their differences from the initial plan;
- (v) If the industrial design for which protection is requested is an industrial design for a set of products, the Descriptive section must present fully the design for each product within that set.
- (g) The request for protection shall be used to determine the scope (quantity) of protection of the industrial design. The request for protection must present clearly the shaping features which have been created and for which protection is requested, namely the features which are new and which are different from other known industrial designs.

### 33.6 Requirements applicable to set of photos and drawings of the industrial design:

The applicant shall lodge five sets of photos or five sets of drawings of the industrial design, which must express fully the shaping features of the industrial design requested for protection to the extent that, based on it, any person with average knowledge in the relevant technical field would be able to verify such industrial design, and shall comply with the following provisions:

- (a) The photos and drawings must be clear and distinct, all of the same colour, and not mixing the products bearing the industrial design to be protected with any other products.
- (b) All photos and drawings shall present the industrial design to the same scale. The dimensions of the industrial design in a photo or drawing shall not be less than 90 millimetres by (x) 120 millimetres and shall not exceed 190 millimetres by (x) 277 millimetres.
- (c) All photos and drawings shall present the industrial design from the same direction and in order of the following dimensions: three-dimensional perspective, and views from the front, back, right-hand side, left-hand side, from above and from below and all these views must be front face.
- (d) A symmetrical projection [view] need not be shown in the photos and drawings of the industrial design.
- (e) The projection [view] of a commercially exploitable product with the industrial design (a packet or a case for example) may be given in photos and drawings of the industrial design in such exploitable state.
- (g) Depending on the request for protection, there must be an additional photo or drawing of the elevation and sectional planes which is adequate to show clearly the new shaping features of the industrial design for which protection is requested.
- (h) If the product has different use states (for example it has a lid valve or can be folded up or closed etc.), then the photos and drawings must show the product in those various use states.
- (i) The industrial design of a section of a complete product must have photos or drawings explaining the position of installing and using the section within the complete product.



- (k) Each plan of the industrial design must have a set of photos or drawings.
- (l) With respect to a set of products, there must also be an image of the perspective of the set of products as well as of the elevation of each product in the set.

33.7 Shaping features of the industrial design:

- (a) *Basic special shaping features of an industrial design* means specified elements of its cubic, linear and colour features and of the correlation of positions or correlation of measurements together with other elements (signs) which create the necessary and complete collection which determines the nature of that industrial design.
- (b) The following elements shall be deemed not to be basic special shaping features of an industrial design:
  - (i) The cubic and linear features which are decided by the technical function or use function of the product, for example, the flat shape or plane surface of a disk containing data which is decided by the relative movement between the disk and its fixed structure and so forth;
  - (ii) Elements the existence of which in the collection of signs are insufficient to cause any aesthetic effect (the appearance of the product remains unchanged whether or not those elements are present), for example there is a change in a familiar cubic or linear feature but such change is insufficient to be perceptible such that the changed cubic or linear feature is still perceived as the old cubic or linear feature;
  - (iii) Materials used to manufacture or process the product;
  - (iv) Signs which are attached to the product only to exercise the function of providing information or guidelines on origin, special features, composition, utility or method of use and so forth of such product, for example, words printed on the trademark;
  - (v) Size of the product, except where there is a change in size of a mock-up of a relevant object.
- (c) Fundamental and non-fundamental basic special shaping feature of an industrial design:

A fundamental basic special shaping feature of an industrial design is one which is easily recognizable, and necessary and adequate to distinguish the industrial design from other industrial designs used for the same type of product.

Any other special shaping feature shall be deemed to be a non-fundamental basic special shaping feature of the industrial design.

**34. Examination of form and announcement of application for registration of an industrial design:**

Procedures for examination of form and announcement of an application for registration of an industrial design shall be implemented in accordance with clauses 13 and 14 of this Circular.

**35. Examination of contents of application for registration of an industrial design:**

35.1 Assessment of similarity with other industrial designs:

- (a) Two industrial designs shall be deemed to overlap if they are used for the same type of product and have an identical collection of fundamental and non-fundamental basic special shaping features;
- (b) Two industrial designs shall be deemed to be similar if they are used for the same type of product and some fundamental basic special shaping features are the same;
- (c) Two industrial designs shall be deemed to have the closest similarity if the number of their fundamental basic special shaping features which are the same are more than other similar industrial designs.



35.2 Order for procedures for examination of contents of application for registration of an industrial design:

The order of procedures for an examination of the contents of an application for registration of an industrial design shall be implemented in accordance with clause 15 of this Circular and this clause.

35.3 Assessment of conformity of object stated in the application with the type of certificate of protection of an industrial design:

The object stated in the application shall be deemed not in conformity with the type of certificate of protection of an industrial design if:

- (a) The industrial design is not the external appearance of a product;
- (b) The object stated in the application is:
  - (i) It is the external appearance of a product which due to technical qualities of the product must have such appearance;
  - (ii) It is the external appearance of civil or industrial construction works;
  - (iii) It is the external appearance (the invisible part) during use of the product (i.e. normal use of the product by ordinary means by any user, apart from maintenance or repair of the product).

35.4 Reference to information:

- (a) The objective of referring to information:

The objective of referring to information shall be in order to find industrial designs with a similar or overlapping nature to that in the application.

- (b) Reference must be made to at least the information in the following mandatory sources:

- (i) All industrial designs received by the National Office of Industrial Property with an announcement date earlier than the lodging or priority date of the application under consideration;
  - (ii) All industrial designs and certificates of protection of industrial property rights with respect to industrial designs which other organizations and countries have announced within twenty five (25) years prior to the lodging or priority date (if the application is entitled to priority) of the application under consideration and archived in the industrial designs database at the National Office of Industrial Property;
  - (iii) Other information concerning industrial designs collected and retained by the National Office of Industrial Property;
  - (iv) Other applications for registration of an industrial design received by the National Office of Industrial Property with filing dates and priority dates earlier than those of the application under consideration (used to check the "First to file" principle as stipulated in clause 35.9 below).
- (c) In necessary and possible cases, reference shall be extended beyond the minimum mandatory information sources.

35.5 Report on References:

The result of references shall be expressed in a Report on References specifying the fields in which reference was made, the scope of reference and the results found within that scope (statistics on industrial designs found, details on sources of announcements and information, dates of announcements or disclosures) and the Report shall bear the full name of the person preparing it (the person who conducted the references).



"Confronting industrial design" means an overlapping or similar industrial design to the industrial design stated in the application and used to make comparisons with the latter.

35.6 Assessment of whether the industrial design is susceptible of industrial application as stipulated in article 67 of the *Law on Intellectual Property*:

- (a) An industrial design shall be deemed to be susceptible of industrial application if, based on the information in the application, any person with average knowledge in the relevant field would be able to use it as a model for industrial or manual manufacture of products with the same outward appearance as such industrial design. Any person with average knowledge in the relevant technical field means a person with average practical skills in the relevant technical field and with knowledge which is common knowledge in such technical field.
- (b) The industrial design shall be deemed not susceptible of industrial application if:
  - (i) The object stated in the application is the shape or form of a product in an unfixed form such as in a gaseous or liquid form;
  - (ii) The creation of a product in the shape or form stated in the application requires special techniques and cannot be repeated many times;
  - (iii) Other cases with legitimate reasons.

35.7 Assessment of novelty of the industrial design as stipulated in article 65 of the *Law on Intellectual Property*:

- (a) Method of assessing novelty of an industrial design:

A comparison of the set of basic special shaping features with those of an overlapping or similar industrial design to the industrial design stated in the application and used as the confronting industrial design.

- (b) Conclusion on novelty of an industrial design:

The industrial design stated in the application shall be deemed to be new if:

- (i) A confronting industrial design is not identified during the course of reference to information; or
- (ii) A confronting industrial design is identified but the industrial design stated in the application has at least one basic special shaping feature which does not appear in the confronting industrial design; or
- (iii) The confronting industrial design has been published or disclosed as stipulated in clauses 3 and 4 of article 65 of the *Law on Intellectual Property*.

35.8 Assessment of creativity of the industrial design as stipulated in article 66 of the *Law on Intellectual Property*:

- (a) Method of assessing creativity of an industrial design:

A comparison of the set of basic special shaping features with those of a confronting, overlapping or similar industrial design to the industrial design stated in the application.



- (b) Conclusion on creativity of an industrial design:

The industrial design stated in the application shall be deemed not to be creative if:

- (i) It is a simple combination of known basic special shaping features which have already been published or disclosed, and which are here combined by changing their positions, reducing their various quantities etc.;
- (ii) The industrial design is an assembly or association of the natural appearance of flora and fauna, and so forth, or the appearance of well known geometrical shapes (such as circular, elliptical, triangular, square, rectangular or polygonal shapes, or prismatic forms of the above shapes which appear in profile and so forth);
- (iii) The industrial design is the copy of the appearance of famous products or buildings in Vietnam or overseas;
- (iv) The industrial design is the copy of an industrial design in another sector and is widely known (such as the well-known appearance of a child's toy car).

**35.9 Check of "First to file" principle as stipulated in article 90 of the *Law on Intellectual Property*:**

- (a) In order to check the "First to file" principle, reference must be made to at least the information in the mandatory sources in accordance with clause 35.4b(iv) of this Circular.
- (b) The industrial design stated in the application shall be deemed to satisfy the "First to file" principle if no overlapping or significantly similar industrial design was identified during the course of reference to applications satisfying the requirements for protection.
- (c) The industrial design of a section of a product stated in the application shall be deemed to satisfy the "First to file" principle if no overlapping or significantly similar industrial design of a section of a product or of a product was identified during the course of reference to applications satisfying the requirements for protection.
- (d) If there are a number of applications for overlapping or significantly similar industrial designs all satisfying the requirements for protection, and all with the same priority or lodging dates, they shall all be deemed to satisfy the "First to file" principle if all applicants agree amongst themselves to nominate one sole application to be awarded the certificate of protection

**35.10 Notice of results of examination of contents:**

The procedures for notice of results of examination of contents shall be the same as those stipulated in clause 15.7(a) of this Circular.

**36. Issuance, registration and announcement of patents to an industrial design:**

Procedures for issuance, registration and announcement of patents to an industrial design shall be implemented in accordance with clauses 18 and 19 of this Circular.

Section 5

**PROCEDURES FOR REGISTRATION OF MARKS**

**37. Requirements applicable to application for registration of a mark:**



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- 37.1 An application for registration of a mark must satisfy the general conditions stipulated in clauses 7 and 10.1 above and the particular conditions stipulated in this clause 37.
- 37.2 An application must ensure uniformity as stipulated in clauses 1 and 4 of article 101 of the *Law on Intellectual Property*. Each application shall only request registration of one mark used for one of more goods or services.
- 37.3 If there are doubts about the reliability of information in the application, the National Office of Industrial Property may require the applicant to file, within one month of the date of such requirement, the following data:
- (a) Date proving status of applicant:
    - (i) Business registration certificate, contract or other data proving the goods such applicant produces or the services such applicant provides as stipulated in article 87.1 of the *Law on Intellectual Property*.
    - (ii) Agreement or letter confirming the manufacturer does not use the mark and does not object to such registration by any organization or individual lawfully engaged in commercial activities as stipulated in article 87.2 of the *Law on Intellectual Property*.
    - (iii) Establishment decision, licence or organizational charter proving the function of the collective organization or of other organizations with the function of controlling and certifying quality, properties, origin or other relevant criteria of goods or services as stipulated in article 87.3 and 87.4 of the *Law on Intellectual Property*.
    - (iv) Agreement or licence or other proof that two or more organizations or individuals have the right to jointly register the mark as stipulated in article 87.5 of the *Law on Intellectual Property*.
    - (v) Data proving the applicant has the right to register the mark as stipulated in article 87.6 of the *Law on Intellectual Property*.
    - (vi) Agreement or letter from the mark owner confirming the applicant has the right to register the mark as representative or agent as stipulated in article 87.7 of the *Law on Intellectual Property* and article 6 of the Paris Convention on industrial property rights.
  - (b) Data proving status of representative of underwriter, power of attorney etc. as stipulated in clause 3 above.
  - (c) Data proving right to use or register a mark with special signs:
    - (i) Details of the sign as stipulated in clauses 2 or 4 of article 73 of the *Law on Intellectual Property*;
    - (ii) Details of the matters as stipulated in clause 5 of article 73 of the *Law on Intellectual Property*;
    - (iii) Details of the signs entitled to protection of other persons as stipulated in clause 2(n) of article 74 of the *Law on Intellectual Property*.
  - (d) Data proving priority right;
  - (e) Information necessary to clarify contents of regulations on use of a collective mark, of regulations on use of a certification mark, or contents of other items in the application.
- 37.4 Requirements applicable to the Declaration:
- The applicant shall lodge two sets of the Declaration in accordance with sample form 04-NH in Appendix A to this Circular.
- (a) The Descriptive section must describe the type of mark (ordinary mark, collective mark, certification mark or associated mark).



- (b) The Descriptive section must describe the features of the associated marks or goods and services as follows:
  - (i) Which of the associated marks is considered fundamental, whether the applicant lodged previous applications for such marks etc.;
  - (ii) In the case of associated goods and services, which of the goods or services is considered fundamental, whether they have been previously registered or mentioned in previous applications giving details of their numbers etc;
  - (iii) If the applicant fails to satisfy sub-clauses (i) or (ii), then each associated mark or associated goods or services shall be deemed independent. An assessment of ability to classify the mark in the application shall not apply to associated marks stipulated in clause 2(e) of article 74 of the *Law on Intellectual Property* but it must comply with clause 39 of this Circular.
- (c) The Descriptive section must detail a certification mark in terms of the objective, contents and method of certification (and stating what is certified, quality or origin etc; the order and conditions for certification etc);
- (d) The Declaration must contain a sample of the mark as follows:
  - (i) If the mark to be protected contains many elements, details of each element and their combination;
  - (ii) If the sample mark is to be protected then this must be specified;
  - (iii) If the mark contains words or letters not in Vietnamese then they must be phonetically reproduced in Vietnamese with a translation of their significance or meaning;
  - (iv) If the mark contains numbers in latin or Arabic then Arabic numbers must be used.
- (e) The list of goods and services bearing the mark in the Declaration must accord with the list of international classification (in accordance with the Nice Agreement) announced by the National Office of Industrial Property in the Official Industrial Property Gazette.

#### 37.5 Requirements applicable to the sample mark:

In addition to the sample mark attached to the Declaration, there must be 9 similar samples as follows:

- (a) Elements of the sample marks must have dimensions not less than 8 millimetres and not exceeding 80 millimetres, and the overall presentation of the mark must have dimensions in the Declaration of 80 millimetres by (x) 80 millimetres;
- (b) A three dimensional mark must include photos and drawings of the sample mark;
- (c) An application requesting protection of a coloured mark must include the actual colour, and if the application does not request protection of a coloured mark then the mark must be presented in black and white.

#### 37.6 Requirements applicable to regulations on use of a collective mark or regulations on use of a certification mark:

Regulations on use of a collective mark or regulations on use of a certification mark must contain the items stipulated in clauses 4 and 5 of article 105 of the *Law on Intellectual Property*:

- (a) Information about the mark, owner, and goods and services bearing the mark;
- (b) Conditions for the person registering the mark to permit use;



- (c) Obligations of users of the mark (to ensure quality etc);
- (d) Rights of the person registering the mark (to check compliance with regulations on use etc);
- (e) Regime on granting permission to use, on checking compliance with regulations on use etc;
- (g) Regime on dispute resolution.

37.7 Requirements applicable to data certifying permission to register and use a certification mark originating from a geographical area:

- (a) Data certifying permission to register and use a certification mark originating from a geographical area must include permission from the local authorities and details of the name of the geographical area, its logo, an area map etc.);
- (b) If the boundaries of the geographical area are unsure and so there is no permission from local authorities as above, the National office of Industrial Property may request the applicant to submit a an area map and other details.

### **38. Examination of form and announcement of application for registration of a mark:**

Procedures for examination of form and announcement of an application for registration of a mark shall be implemented in accordance with clauses 13 and 14 of this Circular.

### **39. Examination of contents of application for registration of a mark:**

39.1 The order of procedures for an examination of the contents of an application for registration of a mark shall be implemented in accordance with clause 15 of this Circular.

39.2 Assessment of conformity of the object stated in the application with the request for issuance of a certificate of registration of the mark:

- (a) The mark must have the sign or signs stipulated in article 72.1 of the *Law on Intellectual Property*;
- (b) The following signs shall not be protected as a mark:
  - (i) The sign is only a colour not assimilated with letters or images;
  - (ii) The sign is ineligible to be protected as a mark as stipulated in article 73 of the *Law on Intellectual Property*;
  - (iii) The sign is incompatible with national defence and security.

39.3 Assessment of distinctiveness (signs being letters and numerals) of a sign as stipulated in article 74.2 of the *Law on Intellectual Property*:

A sign shall be deemed not to be distinct (apart from clause 39.5 of this Circular) in one of the following cases:

- (a) Vietnamese consumers could not normally understand the language of the sign because it is not sourced from latin but from, for example, a Slavic language or an oriental language other than Vietnamese (unless accompanied by a drawing);
- (b) The language of the sign is sourced from latin but contains unreadable elements (unless accompanied by a drawing);



- (c) The sign contains so many letters or expressions or they are in such disorder that readers cannot understand or note them;
- (d) The language or a collection of words in the sign is sourced from latin but is so commonly used in Vietnam that this particular sign is undistinguishable;
- (e) The language or a collection of words in the sign is used in Vietnam as the usual name of related goods or services;
- (g) The language or a collection of words in the sign describes trademarked goods or services such as a sign indicating geographical source, method of production, type of goods, quality or nature or composition or use or value etc. of goods or services;
- (h) The language or a collection of words in the sign describes the legal form or business sector of the mark owner;
- (i) The language of the sign is identical with or similar to another protected object as stipulated in sub clause (e), (g), (h), (i), (k), (l) or (m) of article 74.2 of the *Law on Intellectual Property*;
- (k) The sign causes misunderstanding or confusion as stipulated in article 73.5 of the *Law on Intellectual Property*;
- (l) The language of the sign is identical with or similar to, thereby causing misunderstanding, the real name, pseudonym or pen name of a national hero or celebrity of Vietnam or of a foreign country etc.

39.4 Assessment of distinctiveness of the mark (signs being drawings and images) as stipulated in article 74.2 of the *Law on Intellectual Property*:

A sign shall be deemed to be indistinctive (apart from clause 39.5 of this Circular) in one of the following cases:

- (a) The sign is a common sign such as a geometrical sign (triangle etc.) or is only a line used to decorate products or packaging;
- (b) The sign is so intricate and complicated that consumers cannot understand or easily remember it etc.;
- (c) The drawing or image on the sign is a widely used logo etc.;
- (d) The drawing or image on the sign is in the nature of a description of trademarked goods or services or a geographical source, method of production, type of goods, quality or nature or composition or use or value etc. of trademarked goods or services;
- (e) The sign overlaps with or is not significantly distinctive from the protected industrial design of another entity;
- (g) The image on the sign is identical with or similar to, thereby causing misunderstanding, the image of a national hero or celebrity of Vietnam or of a foreign country.

39.5 The following exceptions shall apply when assessing distinctiveness of drawings and images in the sign:

- (a) A sign stipulated in clause 39.3 (a), (b), (c), (g) and (h) and in clause 39.4 (a), (b), (c) and (e) may still be deemed to be distinctive if it has been widely used as a mark and consumers do understand and easily remember and distinguish it;



- (b) The applicant must lodge proof of continuous and common wide use of the mark as stipulated in clause (a) in commerce, advertising etc.

#### 39.4 Assessment of distinctiveness of a sign combining letters and images (a *combination sign*):

A combination sign shall be deemed to be distinctive when the combination of letters and images on the sign are overall distinctive:

- (a) Both the letters and images on the sign are distinctive and their combination is also distinctive;
- (b) The strongest element of the mark being either the letters or images has a strong affect on consumers causing them to note the mark when observing it, although the residual element is not very distinctive;
- (c) Neither the letters nor images has a strong affect on consumers but their combination is unique and causes a strong affect on consumers;
- (d) The combination of letters and images is not distinctive but the combination sign qualifies as distinctive pursuant to clause 39.5 above.

#### 39.7 Minimum information sources:

In order to assess if the sign in an application causes misunderstanding, reference must be made to at least the information in the following mandatory sources:

- (i) All other applications for registration of a mark filed at the National Office of Industrial Property with a filing or priority date earlier than the lodging or priority date of the application under consideration; and international registration of marks designating Vietnam which the WIPO has notified to the National Office of Industrial Property as having a filing or priority date earlier than the lodging or priority date of the application under consideration;
  - (ii) Patents for similar goods and services which are still valid in Vietnam;
  - (iii) Protection titles terminated pursuant to article 95.1(d) of the *Law on Intellectual Property* for similar goods and services;
  - (iv) Geographical indications protected in Vietnam;
  - (v) Items archived by the National Office of Industrial Property on geographical names, quality etc, for goods and services; names, flags and logos of Vietnamese and international authorities; items on national heroes and celebrities of Vietnam and foreign countries etc.
- (b) In necessary and possible cases, reference shall be extended to applications for registration of commercial names etc.

#### 39.8 Assessment of similarity so as to cause confusion with signs requested to be registered in another mark ("confronting mark"):

- (a) It shall be necessary to conduct a comparison of the structure, contents, pronunciation, meaning and form of expression of the sign in the mark under consideration and the sign in the confronting mark, and also a comparison of goods and services bearing the mark under consideration with goods and services bearing the confronting mark;
- (b) The signs shall be deemed similar if the structure, contents, pronunciation, meaning and form of expression of the two signs are identical.



- (c) The signs shall be deemed confusingly similar if:
  - (i) The structure, contents, pronunciation, meaning and form of expression of the sign in the mark under consideration and the sign in the confronting mark are so close that consumers would believe they are two different versions or have the same origin;
  - (ii) The sign in the mark under consideration is a only transcription or translation of the well-known sign in the confronting mark.

39.9 Assessment of similarity of goods and services:

- (a) Two goods or two services shall be deemed identical (the same type) if:
  - (i) They have the same nature (components etc.), function and use purpose;
  - (ii) They have a closely similar nature but the same function and use purpose.
- (b) Two goods or two services shall be deemed similar if:
  - (i) They have a similar nature, or
  - (ii) They have the same function and use purpose; and
  - (iii) They are put onto the market via the same channel.
- (c) One item of goods and one service shall be deemed similar if:
  - (i) They have a relationship in terms of their nature (they are formed from each other); or
  - (ii) They have a relationship in terms of their function (they are reliant on each other to complete their function); or
  - (iii) They have a relationship in terms of their method of implementation (one is the result of use of the other, for example).

39.10 Check of "First to file" principle as stipulated in article 90 of the *Law on Intellectual Property*:

The National Office of Industrial Property must check the "First to file" principle as stipulated in article 90 of the *Law on Intellectual Property*:

39.11 Result of assessment of similarity of the sign so as to cause confusion with the confronting mark:

The sign shall be deemed similar so as to cause confusion with the confronting mark for identical or goods or similar goods if:

- (i) The sign is identical to the confronting mark and goods and services bear an identical or similar sign as goods and services bearing the confronting mark;
- (ii) The sign is identical to the confronting mark and goods and services are identical to goods and services bearing the confronting mark of the same mark owner;
- (iii) The sign is similar so as to cause confusion to the confronting mark and goods and services bearing a sign identical or similar to goods and services bearing the confronting mark, except when calculating such similarity it is not sufficient to cause misunderstanding when using such similar sign;
- (iv) The sign which is identical or similar to the confronting mark is well-known and goods and services bearing such sign are not identical or similar to those with the confronting mark but could cause consumers to believe there is a relationship between them etc.



39.12 Assessment of ability of the sign to cause other misunderstanding as stipulated in articles 73 and 74.2 of the *Law on Intellectual Property*:

- (a) A sign shall be deemed to cause misunderstanding about the source and origin of goods and services in the following cases:
  - (i) The sign is identical or similar to the name or logo of a country or territory;
  - (ii) The sign is identical or similar to protected geographical indications and could cause consumers to misunderstand the origin of the goods etc.;
  - (iii) Words in the sign are identical or similar to the commercial name of another etc.;
  - (iv) The sign is identical or similar to the real name, pseudonym or pen name of a national hero or celebrity of Vietnam or of a foreign country etc.;
  - (v) The sign is identical or not significantly distinctive from the protected industrial design of another entity etc..
- (b) A sign shall be deemed to be capable of causing misunderstanding about the nature and value of goods and services in the following cases:
  - (i) The sign being words, drawings, images or symbols etc., causes the wrong impression about the use of such goods and services etc.;
  - (ii) The sign being words or images causes the wrong impression about the composition and ingredients use of such goods and services etc..

**40. Issuance, registration and announcement of certificate of registration of a mark:**

Procedures for issuance, registration and announcement of registration of a mark shall be implemented in accordance with clauses 18 and 19 of this Circular.

**41. Processing applications for international registration of marks originating from Vietnam and applications for international registration of marks designating Vietnam:**

41.1 Procedures for applications for international registration of marks originating from Vietnam.

41.2 Right to international registration of a mark on the basis of registration of a mark in Vietnam:

- (a) Anyone granted a certificate of registration of a mark in Vietnam shall have the right to file an application for international registration of the mark in accordance with the Madrid Agreement.
- (b) Anyone who has filed an application for registration of a mark in Vietnam and anyone granted a certificate of registration of a mark in Vietnam shall have the right to file an application for international registration of the same mark in accordance with the Madrid Agreement.

41.3 Applications for international registration of marks originating from Vietnam:

- (a) An application for international registration of a mark designating a member country of the Madrid Agreement but not designating any member country of the Protocol must be in French.
- (b) An application for international registration of a mark designating at least one member country of the Protocol including a member country of the Madrid Agreement must be in English and French.
- (c) An application for international registration of a mark must include a Declaration in accordance with sample form 06-DKQT in Appendix C to this Circular.



- (d) The applicant must calculate total fees and pay them to the National office of Industrial Property.
- (e) The applicant must ensure information declared in the application is accurate.
- (g) All correspondence and transactions regarding an application for international registration of a mark shall be via the National office of Industrial Property.

41.4 Body receiving applications for international registration of marks originating from Vietnam:

- (a) Applications for international registration of marks shall be submitted to the International Office via the National office of Industrial Property.
- (b) The date on which the National office of Industrial Property receives an application shall be deemed to be the date of filing of the application if the International Office receives the application within two months from the date stamp of receipt by the National office of Industrial Property; otherwise the date of filing shall be deemed to be the date of receipt by the International Office.

41.5 Amendment or transfer of applications for international registration of marks originating from Vietnam:

- (a) After the date of receipt by the International Office, all transactions regarding amendment or transfer of applications for international registration of marks originating from Vietnam shall be in accordance with sample form 08-SDQT in Appendix C to this Circular and shall be conducted via the National office of Industrial Property.
- (b) The owner must request recording by the International Office of an assignment of rights to an internationally registered mark via the National office of Industrial Property, except the request may be made directly to the International Office in the case of international registration in a member country of the Protocol.

41.6 Processing applications for international registration of marks designating Vietnam:

- (a) After receiving notice of an application for international registration of a mark designating Vietnam from the International Office, the National Office of Industrial Property shall examine the content of that application in the same manner as applications for marks filed directly with the National Office of Industrial Property. Within twelve (12) months from the date on which the mark is internationally registered, the National Office of Industrial Property shall issue a conclusion on whether the trademark can be protected.
- (b) If the mark can be protected in Vietnam, the National Office of Industrial Property shall issue a decision accepting protection of the mark, record the scope of protection as recorded by the WIPO, and record same in the National Register of Industrial Property and announce the decision in the Official Gazette of Industrial Property within one month from the date of the decision.
- (c) If the mark cannot be protected, the National Office of Industrial Property shall notify the International Office to in turn notify the applicant.
- (d) Within three months from the date on which the National Office of Industrial Property sends the notice of refusal, the applicant shall have the right to complain against the decision of the National Office of Industrial Property. The procedures for complaining and dealing with complaints are the same as those for applications for marks filed directly with the National Office of Industrial Property. The results of dealing with complaints shall be notified to the applicant and the International Office by the National Office of Industrial Property.
- (e) As from the date international registration of a mark is recognized as effective in Vietnam and as requested by the owner, the National Office of Industrial Property shall issue a certificate of protection on payment of fees.



#### 41.7 Extension of validity of international registration of marks originating from Vietnam:

The owner must pay fees pursuant to a notice from the International Office for extension of validity of international registration of a mark 6 months prior to the expiry date (20 years from the date of filing for international registration in the case of a member country of the Madrid Agreement also a member country of the Protocol; and 10 years from the date of filing of the application for international registration in the case of a member country of the Protocol).

#### 41.8 Conversion of application for international registration due to rescission of effectiveness of international registration:

- (a) If international registration of a mark in Vietnam of an owner being from a country which is a member country of the Protocol is no longer effective pursuant to article 9 of the Madrid Protocol, the owner may convert the application in accordance with sample form 07-DKCD in Appendix C to this Circular to claim protection for some or all of the goods and services which were recognized in the no longer effective international registration.
- (b) Such a converted application must satisfy the following requirements:
  - (i) It is filed within 3 months of the date on which the international registration was no longer effective;
  - (ii) The goods and services described in the converted application are the goods and services which were recognized in the no longer effective international registration;
  - (iii) The converted application satisfies the requirements of the law of Vietnam on form and contents, and fees are paid.
- (c) The converted application shall have the same priority or lodging date as the corresponding international application.

#### **42. Recognition of a well-known mark:**

42.1 Well-known marks shall be protected in Vietnam pursuant to article 75 of the *Law on Intellectual Property* and article 6 of the Paris Convention on industrial property rights.

42.2 Well-known marks shall be protected without registration by the owner.

42.3 Details [not given in this translation] of data proving ownership of a mark and that it is well-known.

42.2 If a well-known mark is recognized pursuant to civil proceedings or by a decision of the National Office of Industrial Property, it shall be recorded in the relevant list of well-known marks and archived at the National Office of Industrial Property.

### Section 6

#### **PROCEDURES FOR REGISTRATION OF GEOGRAPHICAL INDICATIONS**

#### **43. Requirements applicable to applications for registration of a geographical indication:**

43.1 An application for registration of a geographical indication must satisfy the general conditions stipulated in clauses 7 and 10.1 above and the particular conditions stipulated in this clause 43.

43.2 An application must ensure uniformity as stipulated in clause 1 of article 101 of the *Law on Intellectual Property* in that an application shall only seek registration of one geographical indication used for one single product.



43.3 All documentation, namely the Declaration in accordance with sample form 05-CDDL in Appendix A to this Circular; the Description of the characteristics/quality/reputation of the product; the map of the relevant geographical location and the ten examples of presentation of the geographical indication must have dimensions not less than 20 millimetres by (x) 20 millimetres and not exceeding 80 millimetres by (x) 80 millimetres.

43.4 Requirements applicable to the Description of the characteristics/quality/reputation of the product:

(a) The Description must:

- (i) List the nature and quality of products bearing the geographical indication;
- (ii) Prove the decisive nature of the geographical origin as the reason for the reputation of the geographical indication;
- (iii) Prove the geographical conditions created the characteristics/quality/reputation of the product bearing the geographical indication; and
- (iv) Prove the relationship between the nature and quality of products in item (i) above with the geographical conditions in item (iii) above.

(b) The Description must attach testing results etc. to prove the above information.

43.5 Requirements applicable to the map of the relevant geographical location:

The Description must attach a map of the relevant geographical location to prove information about the geographical conditions etc.

#### **44. Examination of form and announcement of application for registration of a geographical indication:**

Procedures for examination of form and announcement of an application for registration of a geographical indication shall be implemented in accordance with clauses 13 and 14 of this Circular.

#### **45. Examination of contents of application for registration of a geographical indication:**

45.1 Order of procedures for examination of contents:

Procedures for examination of contents shall be implemented in the general order stipulated in clause 15 of this Circular and in this clause 45.

45.2 Assessment of conformity of object stated in the application with the type of certificate of registration of a geographical indication:

The object stated in the application shall be deemed not to conform to the type of certificate of registration if the object is not a sign seen to be used to identify a product as originating from a specific region, locality, territory or country.

45.3 Assessment of geographical indication in accordance with protection criteria:

- (a) The object stated in the application shall be approved for registration and recorded in the National Register of Geographical Indications if it satisfies the requirements in article 79 of the *Law on Intellectual Property* and does not fall within the cases in article 80 of the *Law on Intellectual Property*, namely if it is proven that:
  - (i) The object exists in a geographical area corresponding to the geographical indication stated in the application;
  - (ii) The product originates from the area mentioned above;



- (iii) The product has characteristics/quality and/or reputation decided by the geographical conditions of the geographical area mentioned above as required by article 82 of the *Law on Intellectual Property*.
- (b) A geographical indication shall not be registered if:
  - (i) It has already become the generic name of goods in Vietnam;
  - (ii) It is a geographical indication of a foreign country where it is not, or no longer, protected or used;
  - (iii) It is a geographical indication identical with or similar to a protected mark in Vietnam, where the use of such geographical indication is likely to cause confusion as to the origin of products;
  - (iv) It is a geographical indication which misleads consumers as to the true geographical origin of products bearing such geographical indication.
- (c) Method of assessment of geographical indication in accordance with protection criteria:
 

A geographical indication shall be assessed on the basis of information supplied by the applicant and information obtained from the following minimum mandatory information sources:

  - (i) Marks protected in Vietnam for identical or similar products to those bearing the geographical indication with an earlier protection date than the date of filing the application for registration of the geographical indication;
  - (ii) Marks recognized by the National Office of Industrial Property as well-known marks.

**46. Issuance, registration and announcement of certificate of registration of a geographical indication:**

Procedures for issuance, registration and announcement of a certificate of registration of a geographical indication shall be implemented in accordance with clauses 18 and 19 of this Circular.

## CHAPTER II

### PROCEDURES FOR REGISTRATION OF CONTRACTS FOR TRANSFER OF INDUSTRIAL PROPERTY RIGHTS AND PROCEDURES FOR COMPULSORY LICENSING OF INVENTIONS

#### Section 1

#### PROCEDURES FOR REGISTRATION OF CONTRACTS FOR TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

**47. Application file requesting registration of contract for transfer of industrial property rights:**

47.1 An application file requesting registration of a contract for transfer of industrial property rights shall comprise the following:

- (a) Declaration requesting registration, in two copies in accordance with standard form 01-HDCN in Appendix D to this Circular;



- (b) Two originals or two copies of the contract; if the contract is in a language other than Vietnamese, a Vietnamese translation must be included; each party must have signed each page or the pages must be affixed with an overlapping seal;
- (c) The original certificate of protection;
- (d) Written consent of co-owners regarding the transfer of the right if the industrial property right is jointly owned;
- (e) Power of attorney (if the application is sent by post);
- (g) Document evidencing the payment of fees.

47.2 An application file requesting registration of a contract for transfer of the right to use an industrial property object shall comprise the following:

- (a) Two copies Declaration requesting registration of the contract for transfer of the right to use the industrial property object, in accordance with standard form 02-HDCN in Appendix D to this Circular;
- (b) Two originals or two copies of the contract; if the contract is in a language other than Vietnamese, a Vietnamese translation must be included; each party must have signed each page or the pages must be affixed with an overlapping seal;
- (c) Written consent of co-owners regarding the transfer of the right if the industrial property right is jointly owned;
- (e) Power of attorney (if the application is sent by post);
- (g) Document evidencing the payment of fees.

**48. Procedures for processing application files requesting registration:**

48.1 Where the application file requesting registration does not have deficiencies as stipulated in clause 48.3 below, the National Office of Industrial Property shall:

- (a) Issue a decision granting a certificate of registration of the contract for transfer of ownership or of the right to use the industrial property object;
- (b) With respect to transfer of ownership of an industrial property object, record in the certificate of protection the new owner; grant a certificate of registration of the new mark to the transferee in a case of transfer of a protected mark for part of the list of goods and services and certify restriction on the list of goods and services in the original certificate; or with respect to transfer of the right to use an industrial property object, grant a certificate of registration of the contract for transfer to the applicant; and stamp the registration seal on two copies of the contract and deliver one copy to the applicant filing the registration documentation and retain one in the files;
- (c) Record the transfer in the National Register of Industrial Property;
- (d) Announce the decision granting the registration certificate in the Official Gazette of Industrial Property within two months from the date of the decision granting the certificate of registration.



- 48.2 Where the application file requesting registration has deficiencies as stipulated in clause 48.3 below, the National Office of Industrial Property shall:
- (a) Issue a decision specifying an intention to refuse grant of a certificate of registration of the contract for transfer of ownership or of the right to use the industrial property object and specifying the deficiencies, and fix a time-limit of one month from the date of the notice for the applicant to provide its opinion or to rectify the deficiencies;
  - (b) Issue a decision refusing to register the contract if the applicant fails to amend or remedy the deficiencies or remedy them satisfactorily, or does not provide an opinion on the intention to refuse approval or provides an unmeritorious opinion within the specified time-limit.
- 48.3 An application file requesting registration of a contract for transfer of industrial property rights shall be deemed to have deficiencies in one of the following cases:
- (a) The Declaration is invalid;
  - (b) The file lacks a document on the list of mandatory documents;
  - (c) The power of attorney is invalid;
  - (d) The copy contract has not been correctly certified;
  - (e) The name and address of the transferor in the contract is inconsistent with the corresponding information in the certificate of protection or with the grounds for the right to transfer the industrial property rights or with the name and address in the Declaration or power of attorney; or the name and address of the transferee in the contract is inconsistent with the name and address in the Declaration or power of attorney;
  - (g) The contract does not have the signatures of the transferee and transferor and/or their seals;
  - (h) The transferor is not the owner of the certificate of protection;
  - (i) The industrial property right is no longer within the time period for protection or is under dispute;
  - (k) The contract does not have the contents stipulated in article 144.1 of the *Law on Intellectual Property*;
  - (l) The contract has contents which are not in compliance with the regulations on conditions restricting transfer as stipulated in article 139 of the *Law on Intellectual Property*; or has conditions illegally restricting the use right of the transferee as stipulated in article 144.2 of the *Law on Intellectual Property*;
  - (m) There is evidence to confirm that the transfer of the industrial property right will infringe the industrial property rights of a third party.
- 48.4 The time-limit for processing an application file for registration of a contract for transfer of industrial property rights shall be two months (excluding time for the applicant to rectify any deficiencies).

**49. Recording amendments, extension, or early termination of validity of [registered] contracts for transfer of industrial property rights:**

- 49.1 Any amendment, extension, or early termination of validity of a registered contract for transfer of industrial property rights must be recorded at the National Office of Industrial Property.
- 49.2 Application files:



- (a) An application file requesting the recording of an amendment, extension, or early termination of validity of a [registered] contract for transfer of industrial property rights shall comprise the following:
    - (i) Two copies Declaration recording the amendment, extension, or early termination in accordance with standard form 03-SDHS in Appendix D to this Circular;
    - (ii) Original certificate of registration of the contract (in the case of an amendment or extension);
    - (iii) Data proving change of name and address of the parties;
    - (iv) Agreement on and details of the specific clauses required to be amended or supplemented in the contract;
    - (v) Power of attorney (if the application is sent by post);
    - (vi) Document evidencing the payment of fees.
  - (b) An application file requesting extension of a contract must be lodged one month prior to the expiry date in the certificate of registration of the contract.
- 49.3 The National Office of Industrial Property shall, within one month from the date of receipt of an application file requesting the recording of an amendment, extension or early termination, conduct the following:
- (a) Issue a decision recording the amendment, extension, or early termination of validity of the registered contract for transfer of the right to use the industrial property object and record same in the certificate of registration of the contract and in the National Register of Industrial Property; and announce the decision in the Official Gazette of Industrial Property within two months from the date of the decision.
  - (b) Where the application file has deficiencies, issue a decision specifying an intention to refuse to record the amendment, extension, or early termination of validity and specifying the deficiencies, and fix a time-limit of one month from the date of the notice for the applicant to provide its opinion or to rectify the deficiencies; and issue a decision refusing to record the amendment, extension, or early termination of validity if the applicant fails to amend or remedy the deficiencies or remedy them satisfactorily or does not provide an opinion on the intention to refuse approval or provides an unmeritorious opinion within the specified time-limit.

## Section 2

### PROCEDURES FOR COMPULSORY LICENSING OF INVENTIONS

#### 50. Application file requesting a decision to compulsorily license an invention:

- 50.1 Any organization or individual with the ability, duty or a need to use an invention as stipulated in sub clause (a) (b) and (c) of, or who has been subject to anti-competitive practices as stipulated in sub clause (d) of article 145.1 of the *Law on Intellectual Property* may request a decision to compulsorily license an invention pursuant to article 147 of the *Law on Intellectual Property*.
- 50.2 An application file requesting a decision to compulsorily license an invention shall comprise the following:
- (a) Two copies Declaration requesting a decision to compulsorily license the invention, on standard form 04-CGBB in Appendix D to this Circular;



- (b) Data proving the request and in particular:
  - (i) If the basis of the request is article 145.1(a) of the *Law on Intellectual Property* there must be proof of the filing date of the application; proof that there is a real need to use the invention for public and non-commercial purposes or in service of national defence and security, disease prevention, or treatment and nutrition of people or other urgent needs of society; proof that the holder of the exclusive right to use such invention has not used it; and proof that such non-use affects the above-mentioned use purposes.
  - (ii) If the basis of the request is article 145.1(b) of the *Law on Intellectual Property* there must be proof that the holder of the exclusive right to use such invention failed to fulfil the obligations to use such invention stipulated in article 136.1 and article 142.5 of the *Law on Intellectual Property* upon the expiration of four years from the date of filing the application for registration of the invention or upon the expiration of three years from the date of granting the invention patent;
  - (iii) If the basis of the request is article 145.1(c) of the *Law on Intellectual Property* there must be proof that the person wishing to use the invention failed to reach an agreement with the holder of the exclusive right to use such invention on entry into an invention licence contract in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions as offered by the person wishing to use the invention, including details of the time taken to negotiate and the actual commercial price and conditions offered;
  - (iv) If the basis of the request is article 145.1(d) of the *Law on Intellectual Property* there must be proof that the holder of the exclusive right to use such invention actually performed anti competitive practices prohibited by the law on competition;
  - (v) If the request for a decision to compulsorily license an invention is in the semi-conducting industrial sector, there must be proof of use for public and non-commercial purposes or proof that the holder of the exclusive right to use such invention actually performed acts deemed to be anti-competitive practices prohibited by the law on competition.
- (c) Power of attorney (if the application is sent by post);
- (d) Document evidencing the payment of fees.

**51. Procedures for processing application files requesting a decision to compulsorily license an invention:**

51.1 An application file shall be lodged as follows:

- (a) An application file as stipulated in sub-clauses (b), (c) or (d) of article 145.1 of the *Law on Intellectual Property* shall be lodged with the National Office of Industrial Property;
- (b) An application file as stipulated in sub-clause (a) of article 145.1 of the *Law on Intellectual Property* shall be lodged with the ministry or ministerial equivalent body for the field of invention under its management.

51.2 Examination of applications:

The relevant ministry or ministerial equivalent body shall appoint an examining body to examine an application stipulated in clause 51.1(b) above. The National Office of Industrial Property or other examining body shall, within two months from the date of receipt of an application file, conduct the following:



- (a) Within 15 days from receipt of a valid application file, issue a notice to the holder of the exclusive right to use the invention announcing the application to compulsorily license the invention and requesting a written opinion within one month from the date of the notice, and if necessary requesting the parties to re-negotiate to overcome any hindrances to signing a contract for transfer of the right to use the invention; and if negotiations are unsuccessful or the opinion of the holder of the exclusive right to use the invention is unmeritorious, to report to the Minister of Science and Technology or to the head of the relevant ministry or ministerial equivalent body to issue a decision compulsorily licensing the invention.

If the application falls within sub-clause (a) of article 145.1 of the *Law on Intellectual Property* and the use of the invention is for public and non-commercial purposes, then the examining body shall issue a decision compulsorily licensing the invention without requesting a written opinion from the holder of the exclusive right to use the invention and without requesting the parties to re-negotiate.

- (b) If the application is without legitimate grounds within article 145 of the *Law on Intellectual Property* then the examining body shall report to the Minister of Science and Technology or to the head of the relevant ministry or ministerial equivalent body to issue a notice of intention to refuse approval of the application specifying the reasons and fixing a time-limit of one month from the date of the notice for the applicant to provide its opinion. The time granted for the applicant to refute the reasons of the examining body or to remedy deficiencies shall not be included in the time-limit for examination of files.
- (c) If the application falls within sub-clause (a) of article 145.1 of the *Law on Intellectual Property* then the examining body shall obtain an opinion from the Ministry of Science and Technology (via the National Office of Industrial Property) and thereafter within a further 15 days from receipt of such opinion the National Office of Industrial Property shall report to the Minister of Science and Technology or to the head of the relevant ministry or ministerial equivalent body to issue a decision compulsorily licensing the invention or refusing to do so.

- 51.3 Within 15 days from receipt of the report from the National Office of Industrial Property, the Minister of Science and Technology shall issue a decision compulsorily licensing the invention or issue a notice to the applicant refusing to compulsorily license the invention and specifying the reasons.

Within 15 days from receipt of the opinion from the Minister of Science and Technology, the head of the relevant ministry or ministerial equivalent body shall issue a decision compulsorily licensing the invention or issue a notice to the applicant refusing to compulsorily license the invention and specifying the reasons. If the head of the relevant ministry or ministerial equivalent body disagrees with the opinion from the Minister of Science and Technology, such head must provide written notice specifying the reasons for the disagreement.

- 51.4 Any decision compulsorily licensing an invention shall be sent by the Minister of Science and Technology and to the licensee, to the holder of the exclusive right to use such invention, and to the National Office of Industrial Property.

The National Office of Industrial Property shall record the decision in the National Register of Industrial Property within one month, and announce the decision in the Official Gazette of Industrial Property within two months from the date of the decision.

**52. Termination of right to use an invention pursuant to the decision to compulsorily license the invention:**



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- 52.1 Only the Minister of Science and Technology or the head of the relevant ministry or ministerial equivalent body who issued the decision compulsorily licensing the invention shall have authority to issue a decision terminating such right to use the invention.
- 52.2 An application file requesting termination of the right to use the invention pursuant to a decision compulsorily licensing the invention shall comprise the following:
- (a) Written request;
  - (b) Data proving that the bases for the decision compulsorily licensing the invention no longer exist and will not arise again, and that termination of the right to use the invention will not cause loss to the licensee;
  - (c) Power of attorney (if the application is sent by post);
  - (d) Document evidencing the payment of fees.
- 52.3 Procedures for processing requests for termination of the right to use an invention pursuant to a decision compulsorily licensing the invention shall be implemented in accordance with clause 51 of this Circular.

### CHAPTER III

## INDUSTRIAL PROPERTY REPRESENTATION

### Section 1

#### ISSUANCE AND REVOCATION OF INDUSTRIAL PROPERTY REPRESENTATION SERVICES PRACTISING CERTIFICATES

##### 53. Issuance of practising certificates:

###### 53.1 Conditions for issuance of practising certificates:

Only individuals who satisfy all the conditions stipulated in article 155.2 of the *Law on Intellectual Property* shall be issued with an industrial property representation services practising certificate (*practising certificate*).

###### 53.2 Application file for a practising certificate:

- (a) An application file shall include the following documents:
  - (i) Two copies of a Declaration requesting a practising certificate, prepared on sample form 01 CCHN in Appendix E to this Circular;
  - (ii) Copy notice of satisfaction of requirements during a professional inspection of industrial property representatives held by the National Office of Industrial Property;
  - (iii) Two photos (3 x 4);
  - (iv) Voucher proving payment of fee.

###### 53.3 Processing application files for practising certificates:



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The National Office of Industrial Property shall, within one month from the date of receipt of a valid application file, issue a decision granting a practising certificate and record same in the National Register of Industrial Property Representatives, and announce the decision in the Official Gazette of Industrial Property within two months from the date of the decision; or issue a notice specifying deficiencies and fix a time-limit of one month from the date of the notice for the applicant to rectify the deficiencies; or issue a notice refusing to grant a practising certificate unless the applicant remedies the specified deficiencies.

**54. Revocation of practising certificates:**

If a competent State body issues a penalty decision in the form of revocation of the practising certificate of an industrial property representative who is in breach, the National Office of Industrial Property shall issue a decision revoking the practising certificate, delete the name of the representative from the National Register of Industrial Property Representatives and announce the decision in the Official Gazette of Industrial Property within two months from the date of the decision.

**55. Re-issuance of practising certificates:**

The National Office of Industrial Property shall, on receipt of an application prepared on sample form 02-CLCC in Appendix E to this Circular, issue a decision re-issuing the practising certificate of a representative whose certificate was lost or damaged to the extent that it is no longer usable.

Procedures for re-issuance of practising certificates shall be implemented in accordance with clause 53.3 of this Circular.

**[The following sections 2 and 3 and Chapter IV have not been translated:]**

Section 2:

**RECOGNITION, AMENDMENT AND DELETION OF NAMES OF INDUSTRIAL PROPERTY REPRESENTATION SERVICE BUSINESSES**

Section 3:

**PROFESSIONAL INSPECTIONS OF INDUSTRIAL PROPERTY REPRESENTATIVES**

CHAPTER IV

**ENSURING PROVISION OF INFORMATION ON INDUSTRIAL PROPERTY**

CHAPTER V

**IMPLEMENTING PROVISIONS**

**65. Rules for conducting procedures:**

The National Office of Industrial Property shall issue Rules for conducting the procedures in Decree 1032006-ND-CP and in this Circular.

**66. Transitional provision:**

66.1 An application for registration of an invention pursuant to this Circular shall be understood to include both an application for a patent for an invention and an application for a patent for a utility solution pursuant to previous provisions.



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66.2 Where international registration of a mark was recognized in Vietnam pursuant to previous provisions, then the announcement in the WIPO Gazette or in the Official Gazette of Industrial Property of the National Office of Industrial Property shall be valid as the basis for fixing rights to such mark.

66.3 Until there are new provisions on fees, industrial property fees shall be as stipulated in Circular 132 2004-TT-BTC of the Ministry of Finance dated 30 December 2004.

66.4 Previous standard forms shall continue to apply until the National Office of Industrial Property completes technical procedures for the new forms in this Circular and announces them.

**67. Effectiveness:**

67.1 This Circular shall replace:

- (a) Circular 3055-TT-SHCN of the Ministry of Science, Technology and Environment dated 31 December 1999 on establishment of industrial property rights;
- (b) Circular 29-2003-TT-BKHCN of the Ministry of Science and Technology dated 5 November 2003 on establishment of industrial property rights with respect to industrial designs;
- (c) Circular 30-2003-TT-BKHCN of the Ministry of Science and Technology dated 5 November 2003 on establishment of industrial property rights with respect to inventions and utility solutions.

67.2 This Circular shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.

Minister of Science and Technology  
HOANG VAN PHONG

