

**THE
GOVERNMENT**

No: 63/CP

**SOCIALIST REPUBLIC OF
VIETNAM**
Independence – Freedom – Happiness

Hanoi, October 24th, 1996

**GOVERNMENT DECREE ON
Detailed Regulations Concerning Industrial Property**

- Pursuant to the Law on the Organization of Government dated 30 September 1992;
- Pursuant to the Civil Code dated 28 October 1995
- Based on the Resolution of the 8th Session of the 9th National Assembly dated 28 October, 1995;
- On the proposal of the Minister of Science, Technology and Environment

**HEREBY
DECREES:**

Chapter I - GENERAL PROVISIONS

Article 1: Purpose, scope of regulation:

This Decree stipulates detailed regulations on industrial property for the purpose of implementing the provisions contained in Chapter II, Part 6 of the Civil Code passed by the Socialist Republic of Vietnam on 28 October 1995. The provisions of this Decree shall apply only to inventions, utility solutions, industrial designs, trademarks and appellations of origin and shall not apply to other industrial property objects.

Article 2: Terms, definitions:

The terms and definitions contained in this Decree shall have the respective meanings ascribed to them hereunder:

- 1) "The Civil Code" refers to the Civil Code of the Socialist Republic of Vietnam passed by the National Assembly on 28 October, 1995
- 2) "The Paris Convention" refers to the Convention on the Protection of Industrial Property, signed in Paris in 1883, as amended in Stockholm in 1967
- 3) "The PCT" refers to the Patent Cooperation Treaty, signed in Washington in 1970, as amended in 1984;
- 4) "The Madrid Agreement" refers to the Agreement on International Registration of Marks, signed in Madrid in 1891, as amended in 1979;
- 5) "Applicant" refers to the applicant filing an application for a Certificate for inventions, utility solutions, industrial designs, trademarks or appellations of origin;
- 6) "Certificate" refers to the Protection Certificate for inventions, utility solutions, Industrial designs, trademarks or appellations of origin;
- 7) "Trademarks" shall be read as including service marks;
- 8) "Collective mark" refers to a mark used simultaneously by a collective of natural or legal persons or other entities where each member is entitled to independent use in accordance with the regulations Stipulated by such collective;
- 9) "Creator of an invention, utility solution or industrial design" refers to the person or persons directly involved in the creation of an invention, utility solution or industrial design with his, her or their creative labour.

Who provides technical, material or financial assistance and support to the creator without creatively participating in the creation of an invention, utility solution or industrial design by creative labour shall not be considered as creator of such invention, utility solution or industrial design

Article 3: Method for the calculation of time limits

Time limits provided for in this Decree shall be calculated in accordance with Sections 158,159,160,161 and 162 of the Civil Code.

Chapter II - OBJECTS OF INDUSTRIAL PROPERTY PROTECTED BY THE STATE

Article 4: Invention, utility solution

1) In accordance with Sections 782 and 783 of the Civil Code, a technical solution shall be deemed world-wide novel when measured against the state of the art on the following conditions:

- a) The technical solution described in the application for a Certificate for an invention or utility solution is not identical to solutions described in applications for Certificates for inventions or utility solutions filed with the competent authority bearing an earlier priority date.
- b) Before the priority date of an application for a Certificate for an invention or utility solution, the technical solution described in the application has not been disclosed publicly either domestically or abroad by way of use or description in any source of information listed below to the extent that based on that disclosure, a person with average skill in the art would be able to carry out such technical solution.

- Sources related to inventions or utility solutions abroad, as of the publication date;
- Other sources with any information-bearing matter (printed matter, picture, film, magnetic tape, magnetic disc, optical disc etc.), as of the date the information-bearing matter has first been circulated
- Mass media sources (radio, broadcasting, television), as of the publication date;
- Scientific reports, lectures etc., if recorded by any means, as of the date of report or lecture;
- Exhibitions, as of the date the exhibition is presented;

An information shall not be deemed publicly disclosed if only a limited number of persons are aware of such information.

A technical solution shall not be regarded as lacking novelty if it is published without authorisation by another person, and publication dates no longer than 6 months prior to the filing date.

2) In accordance with Article 762 of the Civil Code, a technical solution shall be recognised as possessing inventive step, if such technical solution is the result of creative activity, and is not obvious for a person with average skill in the art based on the available domestic and foreign technology at the priority date of the application for a Certificate for an invention or utility solution.

3) In accordance with Article 782 of the Civil Code, a technical solution shall be recognised as possessing industrial applicability if based on the nature of the technical solution as described in the application for a Certificate for an invention or utility solution, it can be executed under existing or future technical conditions and the result as described in the application for a Certificate can be achieved.

4) The following objects shall not be protected by the State as inventions or utility solutions:

- Ideas, scientific principles and discoveries;
- Methods and systems for economic organisation and management;
- Methods and systems for education, teaching and training,
- Methods for the training of animals;
- Systems in regard of linguistics, information, classifications and compiling of documentations;
- Designs and planning schemes for construction works, projects for regional development and planning;
- Solutions concerning the shape of articles of an aesthetic nature;
- Conventional signs, timetables, rules, regulations and symbols;

- Computer software, topographic designs of integrated circuits, mathematical models, graphs and the like;
- Plant or animal varieties;
- Methods for the prevention, diagnosis or treatment of diseases.

Article 5: Industrial designs

1) In accordance with Article 784 of the Civil Code, an industrial design shall be considered as worldwide novel, if such industrial design adequately meets the following conditions:

a) If it is substantially different from industrial designs described in the applications for Certificates of industrial designs which have been filed with the competent authority bearing an earlier priority date.

b) If it is substantially different from industrial designs of the same kind which have been published in any of the following sources:

- Sources related to the protection of industrial designs abroad, as of the publication date;
- Other sources listed in Article 4.1.b of this Decree with the details relevant to industrial designs.

c) Before the priority date of the application for a Certificate, the industrial design described in the application has not been publicly disclosed domestically or abroad to the extent that based on that disclosure, a person with average skill in the art is able to produce such industrial design. The form of disclosure can be use, description or information by which the industrial design is disclosed as mentioned in (b) above.

For the purposes of this article, two industrial designs shall not be considered as substantially different from each other if they can only be distinguished by shape or features not easily recognised and memorised, and such features cannot be used for a general distinction between said industrial designs.

2) In accordance with Article 784 of the Civil Code an industrial design shall be considered capable of being used as a pattern for products of industry or handicraft if the industrial design can be visually applied la the product and mass-produced by industrial or manual methods,

3) The following objects shall not be protected by the State as industrial designs:

- External designs of products which can be easily created by a person with average skill in the art;
- External designs attributable to technical characteristics of a product or bearing only technical features;
- External designs of civil or industrial construction works;
- Designs of products invisible in the intended process of utilisation;
- Designs of products with mere aesthetic value.

Article 6: Trademarks

1) In accordance with the Article 785 of the Civil Code, a sign used as a trademark shall be recognised as distinctive, if it adequately meets the following conditions:

a) If it has been created from one or several original elements that are easy to recognise, or from several elements combined to form an original set that is easy to recognise, with the exception of signs provided for in (2) of this Article;

b) If it is not identical with or similar to an extent that may be confusing with another person's trademark protected in Vietnam, including trademarks protected in accordance with international agreements to which Vietnam is a member;

c) If it is not identical with or similar to an extent that may be confusing with trademarks described in the application for a Certificate filed with the competent authority and bearing an earlier priority date, including trademark applications filed in accordance with International agreements to which Vietnam is a member;

- d) If it is not identical with or similar to an extent that may be confusing with another person's trademark the validity of which has expired or has been suspended within the last 6 years, except where the validity was suspended only on the basis of non-use of the trademark in accordance with Article 26.2.c of this Decree;
 - e) If it is not identical with or similar to an extent that may be confusing with another person's trademark recognised as a well-known trademark in accordance with Article 6^{bis} Paris Convention or with another person's widely used and recognised trademark;
 - f) If it is not identical with or similar to an extent that may be confusing with trade names or appellations of origin being protected;
 - g) If it is not identical with an industrial design protected or applied for bearing an earlier priority date;
 - h) If it is not identical with another person's image or a character protected under copyright except by permission of the copyright owner.
- 2) The following signs shall not be protected by the State as trademarks:
- a) Signs without distinctive characteristics, such as simple geometric shapes, figures, letters or wordings that cannot be pronounced as words; foreign letters of uncommon languages, except for such signs that have been widely used and recognised;
 - b) Signs, symbols, pictures or common names of goods in any language that have been widely and often used, or are common knowledge;
 - c) Signs indicating time, place, method of manufacture, type, quantity, quality, property, composition, purpose, value of a descriptive character in relation to the goods, services or the origin thereof;
 - d) Signs liable to mislead, confuse or most likely deceive consumers as to the origin, functional parameters, purpose, quality or value of the goods or services;
 - e) Signs identical with or similar to quality marks, control marks, warranty marks etc. of Vietnam, foreign countries or international organisations;
 - f) Signs, names (including photos, names, pseudonyms etc.), pictures or symbols identical with or similar to the extent that may be confusing with the image of State flags, State emblems, national leaders or heroes, distinguished persons, geographical names, Vietnamese or foreign organisations, unless permitted by the competent authorities.

Article 7: Appellations of origin

- 1) An appellation of origin to be protected shall be a geographical name of country or location where the respective goods are produced and such goods have characteristics or qualities attributed to natural or human factors of such country or location.

If the country referred to above is not Vietnam or the location does not belong to Vietnam, the respective appellation of origin shall be protected in accordance with protection in such country or location.

- 2) The following objects shall not be protected by the State as appellations of origin:
 - a) Indications of origin which are not geographical names (including signs which may symbolise a certain country or location without being the geographical name of the country or location);
 - b) Appellations of origin which have become the common name of goods and lost the function of indicating an origin.

Chapter III - ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 8: Basis for establishing industrial property rights and rights of creators of inventions, utility solutions or industrial designs

- 1) In accordance with Article 780 of the Civil Code, industrial property rights over inventions, utility solutions, trademarks and appellations of origin, and in accordance with Article 800 of the Civil Code, rights of creators of inventions, utility solutions and industrial designs shall be established only on the basis of a Certificate issued by the competent authority in accordance with the procedures provided for in this Chapter.
- 2) In accordance with Article 780 of the Civil Code, industrial property rights over Trademarks may also be established under the Madrid Agreement on the basis of an internationally registered trademark accepted by the competent State authority.

Article 9: Certificates

- 1) Certificates issued by the competent State authority shall be special certificates of State to certify the industrial property right of Certificates' owners, the right of creators of inventions, utility solutions, industrial designs and to certify the scope of protection of industrial property rights.

The Certificate shall have effect throughout the whole territory of the Socialist Republic of Vietnam

The National Office of Industrial Property under the Ministry of Science, Technology and Environment shall be the competent State authority referred to above.

2) Kinds of Certificates and terms of validity

- a) Certificates for inventions are Patents for Inventions. The term of validity shall begin with the date of grant and not exceed 20 years counted from the accepted filing date.
- b) Certificates for utility solutions are Patents for Utility Solutions, The term of validity shall begin with the date of grant and not exceed 10 years counted from the accepted filing date.
- c) Certificates for industrial designs are Patents for Industrial Designs. The initial term of validity shall begin with the date of grant and not exceed 5 years counted from the accepted filing date. It may be extended twice for 5 years each.
- d) Certificates for trademarks are Trademark Registration Certificates. The initial term of validity shall begin with the date of grant and not exceed 10 years counted from the accepted filing date. It may be extended consecutively for terms of 10 years each.
- e) Certificates for appellations of origin shall be Certificates on the Right of use an appellation of origin. The initial term of validity shall begin with the date of grant and not exceed 10 years counted from the accepted filing date. It may be extended consecutively for terms of 10 years each.

Article 10: Term of protection, temporary rights

- 1) Industrial property rights and rights of the creators of inventions, utility solutions, industrial designs established on the basis of a Certificate shall be protected by the State as from the date of the grant of the Certificate and last until the expiry date of such Certificate or until the date the Certificate ceases to be valid

Industrial property rights over trademarks established on the basis of an international registration shall be protected by the State as from the date the international registration is published in the Official Gazette of Industrial Property and until the expiry date of the international registration under the Madrid Agreement.

- 2) From the date an application for a Certificate for an invention, utility solution or industrial design is published in the Official Gazette of Industrial Property to the late the Certificate is granted, the applicant may inform those persons starting to use the invention, utility solution or industrial design as described in the application after the publication date, that an application thereto has been filed. If those persons continue such use despite having been informed as above mentioned, the owner of the Certificate shall have the right to request such persons to pay an amount of money equivalent to the amount payable for the right to use industrial property objects (licensing) for the respective period of time.

Article 11: Applications for Certificates

- 1) Applications for Certificates shall contain the request of the applicant for a Certificate for an invention, utility solution, industrial design, trademark or appellation of origin with the respective contents and scope of protection.
- 2) Applications for Certificates shall form a unity. In particular, each application shall be a request for a Certificate for only one object or a number of objects being of the same kind and unified as to the purpose of use.

The unity of objects shall be understood as follows:

- Inventions and utility solutions shall be considered a unity if they are closely related to each other and comprising of one single creative idea.
 - Industrial designs shall be considered a unity if relating to different products of one set used together or forming different embodiments of one industrial design.
 - One application for a Trademark Registration Certificate may relate to a number of products or services under the same trademark.
- 3) Applications for Certificates shall satisfy the requirements as to form and substance according to the regulations of the Minister of Science, Technology and Environment.

Article 12: Language

Applications for Certificates and documents of communication between the applicant and the National Office of Industrial Property shall be made in Vietnamese. Documents in other languages shall be used for comparison, reference or ascertainment only.

Article 13: Conversion of an application for invention into one of utility solution

Within 3 months from the date of notice of refusal to grant a patent for an invention, the applicant may request his application to be converted into a Utility Solution application. All data regarding the filing and priority dates of the application shall be maintained. In case the application for invention is converted, the filing and examination fees already paid shall not be refunded and the applicant shall pay the due conversion fees.

Article 14: The right to obtain a Certificate

The right to obtain a Certificate as provided for in Article 789 of the Civil Code shall belong to the following persons:

- 1) The right to obtain a Certificate for an invention, utility solution or industrial design:
 - a) For an invention, utility solution or industrial design in cases not provided for in (b) and (c) of this subsection, the right to obtain a Certificate shall belong to the creator or the creator's successor;
 - b) For an invention, utility solution or industrial design created in the course of employment under duties assigned by the employer or created mainly by using funds or material facilities of the employer, the right to obtain a Certificate shall belong to the employer assigning the task, or providing funds or material facilities to the creator;
 - c) For an invention, utility solution or industrial design created under a work for hire, the right to obtain a Certificate shall belong to the provider of such work unless stipulated otherwise;
 - d) Persons having the right to obtain a Certificate for an invention, utility solution or industrial design in accordance with (a), (b) or (c) of this subsection may transfer that right (including the right in an application already filed) to other persons in writing.
- 2) The right to obtain a Certificate for trademarks:

- a) Natural or legal persons or other entities legally engaged in production shall have the right to obtain a Certificate for trademarks in order to be used on their products.
 - b) Natural or legal persons or other entities legally engaged in services shall have the right to obtain a Certificate for service marks in order to be used for their services.
 - c) Natural or legal persons or other entities legally engaged in trade shall have the right to obtain a Certificate of trademarks in order to be used for products manufactured by a third party but put into circulation by the applicant, provided the manufacturer does not use such trademark for the respective products and the manufacturer does not object to such application.
 - d) For collective marks, the right to obtain a Certificate shall belong to the natural or legal persons representing the collective of natural or legal persons or other entities who abide by a common regime for the use of the respective trademark.
 - e) The right to obtain a Certificate (including the right in an application already filed), shall be transferable in the same manner as provided for inventions, utility solutions or industrial designs.
- 3) The right to obtain a Certificate for appellations of origin
- a) Natural or legal persons or other entities engaged in the production or trade of products with specific characteristics or qualities attributed to the country or locality of a geographical name in compliance with the provisions of Article 7 of this Decree shall have the right to obtain a Certificate for using the appellation of origin on their products;
 - b) Foreign natural or legal persons showing proof that the appellation of origin is protected in their respective home countries shall have the right to obtain a Certificate for using the appellation of origin for their products in the Vietnamese market;
 - c) The right to obtain a Certificate for using an appellation of origin shall not be transferrable.

Article 15: Exercise of the right to obtain a Certificate

- 1) In order to enjoy protection for industrial property rights, persons having the right to obtain a Certificate as provided for in Article 14 of this Decree shall file an application for such Certificate with The National Office of Industrial Property. An application for a Certificate shall be examined by the National Office of Industrial Property subject to the procedures provided for in this Chapter. Certificates shall be granted on the basis of the application's examination result. The respective scope, contents and term of the industrial property right shall be determined by the Certificate.
- 2) Vietnamese natural or legal persons or other entities may, directly or through an empowered patent attorneys firm, carry out the application for a Certificate and related procedures;
- 3) Natural or legal persons from member-countries of the Paris Convention or countries having signed an agreement on mutual protection with Vietnam or accepted the principle of reciprocity with regard to title protection of industrial Property, may carry out the application for a Certificate and related procedures as follows:
 - a) Foreign individuals resident in Vietnam, foreign legal persons who have legal representative in Vietnam or actual production, business unit in Vietnam may, directly or through an empowered patent attorneys firm, carry out filing of application for a Certificate and related procedures;
 - b) Foreign natural persons not resident in Vietnam or foreign legal persons without a legal representative or real and effective industrial or commercial establishment in Vietnam may apply for a Certificate and carry out related procedures only through a patent attorneys firm;
- 4) The applicant shall guarantee the truthfulness of information in relation to the right to obtain a Certificate and the persons of the applicant and the creator as stated in the application. When a Certificate is invalidated because the above-mentioned information has not been truthful, the owner of the Certificate shall be responsible for all consequences caused by the exercising such right.

Article 16: First-to-file principle

- 1) Where two or more applicants have filed applications for a Certificate for the same invention utility solution or industrial design, or a trademark for the same goods or services, the Certificate may only be granted to the first applicant.
- 2) Where two or more applicants have filed applications for a Certificate for the same invention, utility solution or industrial design, and the applications bear the same priority date, the National Office of Industrial property shall request the applicants to file a single application, and if granted, the Certificate shall belong to all applicants as co-owners, in case one of the applicants disagrees no Certificate shall be granted.
- 3) If there is one or more invention or utility solution application for one single technical solution bearing the same priority dates, the National Office of industrial property shall request those applicants to agree upon the form of protection and combine the applications as provided for in (2) of this Article.
- 4) If two or more persons have filed applications for a Certificate for the same trademark to be used on the same kind of goods or services bearing the same priority dates, the National Office of Industrial Property shall request the applicants to allow one of them to proceed with the application and the others to withdraw their applications on reasonable conditions. In case the applicants cannot reach an agreement, all applications shall be refused.
- 5) If two or more applicants have filed applications for a Certificate for an identical appellation of origin, all applicants shall be granted Certificates for using the appellation of origin upon its registration.

Article 17: Priority rights

- 1) Applicants for a Certificate for an invention, utility solution, industrial design or trademark may request priority on the basis of an application which has been filed early in another country for the same subject matter or on the basis of an exhibition of the object, described in the application, at an official, or officially recognised international exhibition, organised in Vietnam or a third country, if:
 - a) Such third country where the earlier application has been filed or where the exhibition has been organised is a member of the Paris Convention or has signed a bilateral agreement on priority rights with Vietnam, or applies the principle of reciprocity in this respect;
 - b) The applicant is a national or resident or has a real and effective industrial or commercial establishment in the country which satisfies conditions under (a) of this subsection;
 - c) The application for a Certificate for an invention, utility solution, industrial design or trademark has been filed in Vietnam within the time limit provided for in (2) of this Article.
- 2) The time limit for filing an application for a Certificate claiming priority is stipulated as follows:
 - a) If the applicant claims priority under the Paris Convention, the time limit for filing an application for a Certificate shall be 12 months counted from the first filing date in relation to an application for an invention or utility solution; 6 months counted from the first filing date in relation to an industrial design or trademark; or 6 months counted from the date the object has been displayed at an exhibition in relation to an invention, utility solution, industrial design or trademark;
 - b) If the application for a Certificate related to an invention or utility solution has been filed under the PCT, the above-mentioned time limit shall be 21 months in relation to the international application with designation of Vietnam or 31 months in relation to the international application with election of Vietnam, if such election has been effected within 19 months counted from the first filing date;
 - c) If priority is claimed under a bilateral agreement or on the basis of reciprocity, the time limit for filing an application for a Certificate shall be determined in accordance with such agreement or arrangement.

- 3) An applicant claiming priority shall enjoy priority as of the first filing date or the date the object has first been displayed at an exhibition, or the date provided for by a bilateral agreement.
- 4) In order to enjoy a priority right, the applicant shall specify the international convention which serves as the basis for claiming such priority right, pay the respective fee and shall, within 3 months counted from the date of filing the application send a copy of the first application certified by the respective receiving office or certification of display at an exhibition. Failure to submit the above documents within such time limit by the applicant will result in a loss of the priority right.
- 5) If the applicant claims various priority dates, the respective time limits shall be counted from the earliest date among the accepted priority dates.
- 6) The applicant may withdraw a claim for priority in order to defer the publication of the application.

Article 18: Examination of application for a Certificate

- 1) All applications for a Certificate, including international applications under the PCT where the National Office of Industrial Property is the receiving office, shall be examined as to formal requirements by the National Office of industrial Property.

The purpose of such examination is to examine whether the application satisfies the requirements of an officially accepted application; if the application is considered as officially accepted, an official filing date, official filing number, priority date shall be determined.

- 2) All applications for a Certificate for invention, utility solution or industrial design officially accepted shall be published in the Official Gazette of Industrial Property by the National Office of Industrial Property.
- 3) Substantive examination shall be carried out for all applications for a Certificate for trademarks, industrial designs or appellations of origin, including all applications for the international registration of marks under the Madrid Agreement by the National Office of Industrial Property if the applications have been officially accepted and the applicants have paid the due examination fees.

Substantive examination for inventions or utility solutions shall only be carried out for officially accepted applications at the request of the applicant or a third party, provided that such request is submitted to the National Office of Industrial Property within the prescribed period of time.

The purpose of substantive examination is to evaluate the validity of the claim in respect of the protection criteria and determine the respective scope of protection.

- 4) Procedures and time limit for substantive examination shall be regulated by the Ministry of Science, Technology and Environment.

Article 19: Withdrawal of application for a Certificate

- 1) At any given time before the issuance of the decision to grant or refuse a Certificate, the applicant shall have the right to withdraw the application in writing to the National Office of Industrial Property.

If a statement of withdrawal is submitted through a patent attorneys firm, the power of attorney shall clearly state the authorisation for withdrawal of the application.

- 2) The moment the applicant states his/her withdrawal of the application, all further procedures related to this application shall be suspended; fees which have been paid for further procedures shall be refunded to the applicant.
- 3) Applications for inventions, utility solutions or industrial designs which have been withdrawn or considered as withdrawn before publication and applications for trademarks which have been withdrawn or considered as withdrawn shall be considered as not filed with the National Office of Industrial Property.

Article 20: Third party opinions in relation to grant or refusal of a Certificate

During the period of substantive examination, any third party shall have the right to present opinions in relation to grant or refusal of a Certificate to applications which have been published in the Official Gazette of Industrial Property. In case the third party objects the grant of a Certificate, it shall present the reasons and provide documents such reasons are based upon.

Such third party opinions shall be made in writing and sent to the National Office of Industrial Property. The party presenting such opinions shall not be subject to any fees.

Article 21: Consultation of specialists

In order to ensure that the grant of a Certificate complies with conditions provided by law, the National Office of Industrial Property during substantive examination shall have the right to consult for the opinions of specialised organisations and experts in related fields. The organisations, experts whose opinions the National Office of Industrial Property consults shall undertake their obligations in an honest and objective manner and shall be accountable for their opinion.

The organisations and experts whose opinions the National Office of industrial Property consults shall be remunerated for presenting their opinion. The amount of remuneration shall be subject to the quantity and quality of the opinion, but shall not exceed 40% of the fee for substantive examination of the respective object.

Article 22: Request for search

1) From the date an application is accepted, the person who has submitted the application for a Certificate for an invention or utility solution shall have the right to request the National Office of Industrial Property to carry out a search on the state-of-the-art as of the priority date. The applicant shall pay the due fees.

2) Within 3 months from the date the request for search is received, the National Office of Industrial Property shall send the search result to the applicant.

Article 23: Decision of grant

1) If the invention, utility solution, industrial design or trademark satisfies the criteria of protection and the applicant has paid the due fees, the National Office of Industrial Property shall issue a decision to grant a Certificate that shall clearly state the name and address of the person, who is granted the Certificate, the application number, filing date, respective priority date, name of the patent attorneys firm; full name of the creators of the invention, utility solution or industrial design; name of the protected object; name and number of the Certificate; scope and term of protection; or a decision of accepting the protection of the internationally registered trademark under the Madrid Agreement.

2) If an appellation of origin satisfies the protection criteria and the applicant has paid the due fees, the National Office of Industrial Property shall issue a decision to register such appellation of origin that clearly states the name and address of the person requesting for protection, the number of application, filing date, name of patent attorneys firm; the appellation of origin; boundaries of the respective territory; list of products bearing such appellation of origin; name and address of natural or legal persons having the right to use such appellation of origin; registration number of such appellation of origin.

3) If an applicant for a Certificate for an appellation of origin meets the conditions for the use of such registered appellation of origin, the National Office of Industrial Property shall issue a decision to grant a Certificate, permitting the use of such appellation of origin that shall clearly state the name and address of the beneficiary of such Certificate; the number of application, filing date; name of patent attorneys firm; products bearing the appellation of origin produced by the beneficiary of the Certificate; the appellation of origin, its registration number, number of the Certificate and the term the appellation of origin may be used.

Article 24: Certificate, related documents - duplicates and copies

At the request of natural or legal persons or other entities, the National Office of Industrial Property may issue a duplicate of the Certificate to co-owners or a copy of the application for a Certificate for the purpose of requesting priority abroad and other copies of documents except for documents considered secret or not yet fit for publication.

At the request of the owner of the Certificate, the National Office of Industrial Property may issue him/her a duplicate thereof for legitimate reasons.

The person requesting a duplicate or copy shall pay the due fees.

Article 25: Notification of refusal

In cases other than provided for in Article 23 (1), (2) or (3) of this Decree, the National Office of Industrial Property shall issue a notice of refusal to grant a Certificate the reasons for which shall be clearly state (d) This notice shall be sent to the applicant and the person having requested substantive examination of the invention or utility solution, if applicable.

Article 26: Contents, registration and grant of a Certificate

- 1) The contents of a Certificate shall be determined in accordance with the decision of grant; apart from information contained in the decision, the nature and scope of protection plus other necessary information related to the protected right shall be clearly stated.
- 2) The Certificate shall be recorded in the National Industrial Property Registration Book (National Registry).
- 3) The Certificate shall be sent to the applicant. If the applicant is a collective, the Certificate shall be sent to the first person of the collective's list, and the name of such person shall be recorded in the National Industrial Property Registration Book as referred to in (2) of this Article. At the request of other persons of the collective, the National Office of Industrial Property may grant duplicates of the Certificate, provided such person pays the due fees.

Article 27: Appeals and oppositions

- 1) The following persons shall have the right to appeal against decisions of the National Office of Industrial Property:
 - a) An applicant shall have the right to appeal against the rejection of an application for a Certificate or rejection of its grant:
 - b) A person requesting substantive examination for inventions or utility solutions shall have the right to appeal against the grant of a Certificate without being subject to a fee:
 - c) Any third party shall have the right to appeal against a decision to grant a Certificate upon payment of the due fees.
- 2) The procedures for appeals under (1) of this Article shall be as follows:
 - a) The appeal shall be presented in writing and clearly state the full name and address of the appellant; the number, date and contents of the decision or notice subjected to the appeal; the number of the application for the respective Certificate, the name of object of protection as referred to in the application; the contents, reasons and arguments the appeal is based on; and the exact claim on amendment or cancellation of the decision or related conclusion;
 - b) The appeal shall be submitted to the National Office of Industrial Property within 3 months from the date of issuance of the decision or notice in case of appeals under (1) (a) or (b) of this Article, or during the validity of the Certificate in case of appeals under (1)(c) of this Article;
 - c) Appeals submitted after the above-mentioned period shall not be considered.
- 3) Within 30 days from the date of receipt of the appeal, the National Office of Industrial Property shall respond in writing to the appellant,
- 4) In case of any disagreement with the response of the National Office of Industrial Property referred to in (3) of this Article, the appellant shall have the right of further appeal to the Minister of Science, Technology and

Environment or initiate administrative procedures. The Minister of Science, Technology and Environment within 60 days from the date of receipt of the appeal shall notify the appellant of the result of the matter.

Article 28: Suspension of the Certificate:

1) Any third party shall have the right to file an application with the National Office of Industrial Property to request the suspension of a Certificate for reasons referred to in (2) of this Article.

The application requesting suspension of a Certificate shall be handled in accordance with the procedures for appeals under Article 27 (2), (3) or (4) of this Decree.

Should the application requesting suspension of a Certificate be granted under (2) of this Article the Director General of the National Office of Industrial Property shall issue a decision to partly or entirely suspend the validity of a Certificate and publish such decision in the Official Gazette of Industrial Property within 2 months from the decision date.

2) The validity of a Certificate shall be suspended in the following cases:

a) The owner of a Certificate claims to relinquish the rights granted under the Certificate. In this case, the validity of the Certificate shall be suspended from the date relinquishment is requested.

b) The owner of a Certificate has not paid the due fees for the maintenance of the Certificate's validity in time. In this case, the validity of the Certificate shall be suspended from the first year the maintenance fees have not been paid for.

c) The owner of a Trademark Registration Certificate or a Certificate on rights to use the appellation of origin has not used the trademark or appellation of origin without legitimate reasons for 5 consecutive years prior to the request for suspension of validity. In this case, the validity of the Certificate shall be suspended from the first day after such period of 5 years;

d) The owner of a Trademark Registration Certificate or a Certificate on rights to use the appellation of origin has deceased or no longer operates without a legal successor. In this case, the validity of the Certificate shall be suspended at the time operation ended or the owner of the Certificate has deceased;

e) The geographical factors which determine the specific characteristics have changed, resulting in a change of such characteristics. In this case, the validity of the Certificate on the right to use an appellation of origin shall be suspended at the date of the National Office of Industrial Property's decision.

f) The owner of a Certificate on the right to use an appellation of origin is no longer able to meet his/her obligations in accordance with the provisions under Article 47(2) of this Decree.

Article 29: Cancellation of validity

1) Any third party shall have the right to file an application requesting the National Office of Industrial Property to cancel the validity of a Certificate for the reason that such Certificate has been granted contrary to the provisions stated in (2) of this Article.

The application requesting cancellation shall be handled in accordance with the procedures for handling appeals under Article 27 (2), (3) or (4) of this Decree.

Should the application be allowed because the Certificate has been granted contrary to the provisions of law, the Director General of the National Office of Industrial Property shall issue a decision to partly or entirely cancel the validity of the Certificate and publish such decision in the Official Gazette of Industrial Property within 2 months from the decision date.

2) The Certificate shall be entirely canceled if it has been granted contrary to the following provisions:

a) The person who has been granted a Certificate was not entitled to apply for its grant and has not been transferred such right by the entitled person.

- b) The right to obtain a Certificate for an invention, utility solution or industrial design belongs to a number of natural or legal persons or other entities, one of whom has not agreed to the filling;
 - c) The Certificate for an invention, utility solution or industrial design incorrectly states the creator due to a deliberate misinformation supplied by the applicant.
 - d) The object of protection does not meet the relevant criteria.
- 3) The Certificate shall be canceled in part if that respective part does not satisfy the criteria for protection.
 - 4) Upon cancellation the canceled part shall be considered never having been valid.

Article 30: Extension of validity for certain Certificates

Patents for Industrial Designs, Trademark Registration Certificates or Certificates on the right to use an appellation of origin may be extended at the request of the owner of the Certificate.

Article 31: Official Gazette of Industrial Property

- 1) The Official Gazette of Industrial Property published by the National Office of Industrial Property is a legal document which shall publish information concerning the establishment, transfer, change, suspension or cancellation of industrial property rights and their contents and scope of protection.
- 2) The information published in the Official Gazette of Industrial Property relates to:
 - a) Accepted applications for Certificates for inventions, utility solutions or industrial designs;
 - b) Certificates granted and registered, trademarks protected in Vietnam through registration under the Madrid Agreement or other international agreements to which Vietnam is a member;
 - c) Decisions on the change, suspension, cancellation or extension of Certificates;
 - d) Decisions on registrations of licensing agreements and the grant of compulsory licenses;
 - e) Decisions on registrations of agreements on the transfer of ownership of industrial property objects;
 - f) Decisions on the grant, revocation or change of contents of licenses to patent attorneys or patent attorneys firms.
 - g) Documents related to legislative activities on industrial property;
 - h) Other necessary information related to the protection of industrial property rights;

Article 32: Fees

- 1) Natural or legal persons or other entities engaged in the establishment, maintenance, suspension, extension, change or transfer of industrial property rights before the National Office of Industrial Property or other procedures concerning industrial property before competent authorities shall have the obligation to pay the due amount of charges and fees to the competent authorities.

The National Office of Industrial Property and the competent authorities referred to above shall have the obligation to collect charges and fees timely and in full. The charges and fees shall be transferred to the State budget in accordance with the State regulations on charges and fees.

The authorities collecting charges and fees shall be allowed to use part of the collected charges and fees in accordance with State regulations on charges and fees in order to improve the professional and operational capability and encourage people directly carrying out the procedures generating such income.

2) Such charges or fees shall be regulated by the Ministry of Finance in coordination with the Ministry of Science, Technology and Environment, ensuring sufficient reimbursement for the related procedures, in accordance with the existing conditions and international customs.

Fees already paid for procedures no longer required to be carried out or left undone due to default of the competent authority shall be refunded to the payer and the refund shall either be certified by the recipient or requested by invoice.

Chapter IV - OWNERS OF INDUSTRIAL PROPERTY OBJECTS; THEIR RIGHTS AND OBLIGATIONS

Article 33: Owner of industrial property objects: Owners of industrial property objects shall be:

- 1) The persons to whom a Certificate has been granted,
- 2) The owner of an international registration of a trademark under the Madrid Agreement accepted for protection in Vietnam;
- 3) Natural or legal persons or other entities to whom the right of ownership of an invention, utility solution, industrial design or trademark has been legally transferred.

Article 34: Use of Industrial property objects

The following acts shall qualify as use of industrial property objects provided for in Articles 796 (1)(a) and 797 (1)(a) of the Civil Code if undertaken for commercial purposes:

- 1) For inventions and utility solutions:
 - Manufacture of a protected product;
 - Application of a protected process;
 - Exploitation of a protected product;
 - Putting into circulation; advertising, offering or storing for sale, or importing of a protected product or a product manufactured by a protected process.
- 2) For industrial designs:
 - Production;
 - Putting into circulation, advertising, offering or storing for sale, or importing a product on which a protected industrial design has been applied.
- 3) For trademarks and appellations of origin:
 - Attaching a protected trademark or appellation of origin on goods or their wrappings, on service facilities or transaction documents used in business activities;
 - Circulating, offering, advertising or storing for sale of goods bearing the protected trademark or appellation of origin;
 - Importing goods bearing the protected trademark or appellation of origin.

Article 35: Transfer of the right of use (licence)

1) In accordance with Article 796 (1)(b) of the Civil Code and the provisions of this Article, the owner of an industrial property right over an invention, utility solution, industrial design or trademark shall have the right to permit the use of his/her industrial property object entirely or in part to other natural or legal persons or other entities.

The owner of a Certificate of the right to use an appellation of origin shall not be entitled to transfer the right to use such appellation of origin.

2) Transfer of the right to use an industrial property object shall be effected through a written contract ("licensing agreement"). A licensing agreement shall have legal effect only upon registration with the National Office of Industrial Property in accordance with the provisions of Article 42 of this Decree.

(For the effect of registration, see Article 37 (4) below)

Article 36: Infringement of industrial property rights

1) In accordance with Article 796 (1) (c) of the Civil Code, the owner of an industrial property right shall be entitled to request a competent State authority to deal with the matter or else initiate proceedings at a competent court against any third party for having infringed his/her industrial property right except in cases provided for in Articles 50, 51, 52 of this Decree. The owner shall have the right to request injunction and damages against the infringer.

Before bringing the matter to the competent authority or the court, the owner of an industrial property object may notify the infringing party of the industrial property object's ownership and request the infringement to stop.

2) The owner of an invention, utility solution or industrial design shall have the right to request the court's assistance against any person who has not paid due compensation in accordance with the provisions in Article 10 (2) of this Decree.

Article 37: Transfer of ownership (assignment), inheritance, and relinquishment of industrial property rights

1) In accordance with Article 796 (2) of the Civil Code the assignment, inheritance and relinquishment of an Industrial property right shall comply with the following provisions.

2) Ownership rights over a trademark may only be inherited by one natural or legal person or one entity. The successor to the ownership right over the trademark has to meet the conditions necessary for the grant of the respective Certificate.

3) Upon assignment of ownership rights over inventions utility solutions, industrial designs or trademarks, all rights and obligations under the Certificate shall be fully assigned from the assigning party (assignor) to the recipient (assignee). The assignee shall become the owner of the industrial property object from the date the assignment contract is registered with the National Office of Industrial Property. Rights and obligations between the assignor and a third party may be assigned to the assignee under the assignment contract.

4) From the date the licensing agreement has been registered with the National Office of Industrial Property, the licensee shall have the right to use the industrial property object according to the scope, term and conditions provided for in the agreement as registered.

5) The owner of an industrial property object shall not relinquish his right therein when subject to a valid license, unless the licensee agrees to a termination of the licensing agreement before its due expiry date. This provision shall not apply to the case where one or a number of co-owners relinquish their respective parts, of the right while being succeeded by the remaining co-owners.

Article 38: Restrictions on transfer agreements

1) The transferor shall only effect transfer within the limits provided by law and within the term of protection. The transferor shall guarantee that the transfer does not infringe rights of third parties. In the event a dispute arises over the transfer of industrial property rights, the transferor shall be responsible for settling such dispute.

2) If the industrial property right belongs to several owners, each of the coowners shall be entitled to transfer his respective part of the right on condition that the other co-owners so agree, or have no legitimate reasons to disagree or do not wish to obtain such part of right as transferees.

3) Industrial property rights over appellations of origin are not be transferable.

4) The transfer of industrial property rights over trademarks shall not cause confusion over the characteristics or origin of the goods or services such trademarks are used for.

5) In case one party to a transfer of an industrial property right is a State organisation or a joint venture partly owned by State, the transfer agreement shall be subject to approval from the Minister of Science, Technology and Environment.

Article 39: Transfer contracts

1) Any contractual transfer of industrial property rights shall be made in writing. Any oral agreement or agreement by letter or telegram shall not be recognised as a valid transfer contract and shall not have legal effect.

In case transfer of Industrial property rights forms part of another contract, it shall constitute a separable part from the rest of the contract and shall comply with provisions of this subsection.

2) The legal requirements of transfer contract over industrial property rights shall be regulated by the Minister of Science, Technology and Environment.

Article 40: Contractual obligations

1) The transferor shall have the following obligations:

- To register the contract in accordance with Article 42 of this Decree unless registration has been carried out by the transferee;
- To pay transfer tax in accordance with the laws on taxes;
- To settle disputes with any third party affected by the transfer;
- In case of a licensing agreement, the licensor shall take necessary and appropriate measures against acts of infringement by third parties detrimental to the licensee. If after 3 months from the date the licensee has informed the licensor of such infringement and requested action without the licensor having taken appropriate measures, the licensee may request the competent State authorities to deal with such acts of infringement.

2) The transferee shall have the following obligations:

- To register the contract in accordance with Article 42 of this Decree unless registration has been carried out by the transferor;
- To pay the transferor the due amount in such manner as agreed upon by the parties;
- Be subjected to a control on the quality of goods bearing the respective trademark, if necessary to ensure the same quality of goods as produced by the transferor;
- To indicate on the goods, or wrappings that the goods have been produced under license and indicate the name of the licensor.

Article 41: Price and mode of payment for transfer

1) The price of a transfer of industrial property rights shall be agreed upon by the parties. In case the transferor is a State organisation or a joint venture partly owned by the State, the price shall not be lower than the minimum level as below. In case the Transferee is a State organisation or a joint venture partly owned by the State, the price shall not exceed the maximum level as below.

The maximum and minimum levels mentioned above shall be determined by the Ministry of Finance in cooperation with the Ministry of Science, Technology and Environment.

2) The mode of payment for a transfer shall be agreed upon by the parties.

Article 42: Registration of contract

1) Any contract of transfer of an industrial property right, even if part of another contract, shall be registered with the National Office of Industrial Property in accordance with provisions of this Article.

2) The requirements as to documents and procedures for the registration of a transfer contract shall be regulated by the Minister of Science, Technology and Environment.

3) Any change related to a registered transfer contract including a change in the person of the licensee shall be subject to the same procedures as the transfer.

Article 43: Automatic suspension or invalidation of contract

A contract of transfer shall be automatically Suspended if the industrial property right that is the object of the contract is suspended, or else upon force majeure by which the contract cannot be implemented.

A contract of transfer shall automatically be invalidated if the industrial property right that is the object of the contract is no longer valid.

Article 44: Obligation to pay remuneration to the creator

1) If in accordance with Article 798 (1) of the Civil Code the creator is not the owner or co-owner, or unless it is otherwise agreed between the creator and the owner of an industrial property right over an invention, utility solution or industrial design, the owner shall have the obligation to remunerate the creator or creators for the creation of such invention, utility solution or industrial design.

2) Unless otherwise agreed between the creator and the owner of an industrial property right, the amount and the due date of remuneration shall be in accordance with the following provisions:

a) The minimum level of remuneration for the creator of an invention, utility solution shall be 10% of the profit derived each year from the use of the invention or utility solution; or 15% of the total amount of money the owner of the industrial property right has received upon granting a license, including a compulsory license.

b) The minimum level of remuneration for the creator of an industrial design shall be 2% of the profit derived from the use of the industrial design for each year; or 15% of the total amount of money the owner of the industrial property right has received upon granting a license, including a compulsory license.

c) Payment of remuneration to the creator shall be made not later than 2 months after each year of use or no later than 1 month from the date the owner of the industrial property right has received money for the grant of a license, including a compulsory license.

3) Unless otherwise agreed, payment of remuneration shall be made in accordance with such agreement.

Article 45: Maintenance fees

In accordance with Article 798 (2) of the Civil Code, the owner of an industrial property right shall pay a fee for the maintenance of the Certificate's validity. In case the owner of an industrial property right fails to pay such maintenance fee, the Certificate shall be suspended in accordance with Article 28 (2)(b) of this Decree.

Article 46: Obligation to use industrial property objects

1) The owner of an invention, utility solution or industrial design having special impact on national security and defense, or the protection of public health or environment shall have the obligation to use such invention, utility solution or industrial design in order to satisfy the needs of the State and/or society.

In the event the owner of an invention, utility solution or industrial design mentioned above has tried his/her best, but failed to satisfy the needs of the State and/or society, such owner shall have the obligation to grant a license on reasonable conditions to a person willing and able to use the invention, utility solution or industrial design.

2) The owner of a trademark or appellation of origin shall have the obligation to use the trademark or appellation of origin continuously and not suspend the use of such trademark or appellation of origin for more than 5 consecutive years. Failing to do so will subject the Certificate for such trademark or appellation of origin to be suspended in accordance with provisions Article 28 (2) (c) of this Decree.

3) For the purpose of this Article, the licence of an industrial property object shall not be considered as use.

For the purpose of this Article, the use of an industrial property object by the licensee shall be considered as use.

Article 47: Rights and obligations regarding appellations of origin

1) Who has been granted a Certificate on the Right to use Appellation of Origin shall have the following rights:

- a) To use the appellation of origin for his/her product as specified in the list of registered products.
- b) To request the competent State authority to compel other persons to stop infringing acts and pay compensation for damage caused by the illegal use of such appellation of origin or signs confusingly similar thereto, including the case where the true origin of the product is indicated or the appellation of origin is translated into another language or the use is accompanied by "kind", "type", "imitating", or similar words to that effect.

2) Who has been granted a Certificate on the Right to use Appellation of Origin shall have the following obligations:

- a) To ensure the quality or specific characteristics of products bearing the registered appellation of origin.
- b) To comply with requests of and create favourable conditions for the competent State authorities and organisations for carrying out controls of the quality of goods and specific characteristics of products bearing the appellation of origin, when necessary.

Article 48: Rights of creators

1) The creator(s) of inventions, utility solutions or industrial designs shall have the following rights:

- a) To be named in the Certificate, in the National Registration Book on inventions, utility solutions or industrial designs and in documents published in relation to such objects as the creator.
- b) To receive adequate remuneration from the owner of an industrial property right in accordance with Article 44 of this Decree.
- c) To take action against an infringement of the above rights.

2) The right of remuneration and the of taking action against infringement referred to in subsection (1) (b) and (c) of this Article may be assigned and for inherited in accordance with the law.

Chapter V - LIMITATION OF USE OF INDUSTRIAL PROPERTY RIGHTS; INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 49: Conditions for exercising industrial property rights:

In exercising his rights, the owner or licensee of an industrial property object may not contravene the provisions of law, damage the interests of the State or public interests, or infringe legitimate rights or interests of others. Should the exercise of industrial property rights lead to one of the above mentioned violations or offenses, the industrial property right may not be exercised.

Article 50: Rights of the prior user of an invention, utility solution or industrial design:

1) If before the publication date of an application for a Certificate for an invention, utility solution or industrial design there is a natural or legal person or other entity who has used the invention, utility solution or industrial design independently from the applicant, the latter shall not exercise his right against any other natural or legal person or other entity after grant of a Certificate, provided the scope or volume of use has not increased in comparison with the period before the publication date of application. Transferring such right of prior use is not permissible.

2) If after the publication date of an application for a Certificate mentioned in (1) of this Article, such other natural or legal person or other entity has increased the scope or volume of use of the industrial property object in with the scope or volume of use before such date, such increase shall not be covered by the right of prior use.

Article 51: Licence upon decision of the competent State authority ("Compulsory licence")

- 1) Compulsory licensing refers to the owner of an industrial property right or his exclusive licensee over the whole invention, utility solution or industrial design, being compelled to permit another natural or legal person or other entity the use of such industrial property object in accordance with a decision by the competent State body as provided for in this Article.
- 2) The grant of a compulsory license shall be effected only subject to the conditions provided for in Article 802 of the Civil Code.
- 3) The Ministry of Science, Technology and Environment is the competent State body having authority to consider requests for the compulsory use of inventions or utility solutions and to issue decisions to that effect.
- 4) Documents related to the request for a compulsory license shall comply with requirements for formality and content in accordance with the regulations by the Minister of Science, Technology and Environment.
- 5) Within 15 days from the receipt of the documents requesting a compulsory license, the Ministry of Science, Technology and Environment shall notify the owner of an industrial property right or his exclusive licensee over the whole invention, utility solution or industrial design of such request and shall ask for an opinion in writing within 30 days from the date of notice.

If necessary, the Ministry of Science, Technology and Environment shall request the parties involved to re-negotiate in order to overcome disputes and agree on a non-compulsory license.

Failing an agreement on a non-compulsory license and provided arguments for objecting a non-compulsory license by the right owner are unreasonable, the Minister of Science, Technology and Environment shall issue a decision within 3 months from the date of receipt of documents for a compulsory license to be granted. Otherwise, the Minister of Science, Technology and Environment shall issue a notice rejecting the request for a compulsory license on behalf of the person having submitted the documents.

- 6) The decision for a compulsory license to be granted shall be published in the Official Gazette of Industrial Property within 1 month from the date of issue.
- 7) Within 1 month from the date the Minister of Science, Technology and Environment issues the decision for a compulsory license to be granted, the owner of an industrial property right or his exclusive licensee over the whole invention, utility solution or industrial design shall comply with such decision on the conditions stipulated therein.
- 8) The party to which a compulsory license is granted shall have the obligation to remunerate the party subject to such license to the amount and conditions of payment provided for by the decision of the Minister of Science, Technology and Environment and so stipulated in the license.

The party to which a compulsory license is granted shall not transfer the right to use the invention, utility solution or industrial design.

Article 52: Restrictions of rights

The acts provided for in Article 803 of the Civil Code with regard to inventions, utility solutions or industrial designs shall not be considered within the scope of the exclusive right belonging to the owner of industrial property rights, who may not exercise the right of action against a third party engaging in such acts.

Article 53: Infringement of industrial property rights, violation of the right of the creators

- 1) A person other than the owner of an industrial property object committing one of the infringing acts as provided for in Article 805 of the Civil Code and as detailed in Article 34 of this Decree within the term of protection, and without permission of the owner or without a right of prior use as provided for in Article 50 of

this Decree shall be considered as having committed an act of infringement of an industrial property right unless one of the exceptions mentioned in Sections 51, 52 of this Decree does apply.

- 2) The owner of an industrial property object who fails to meet the obligation to pay remuneration to and guarantee the moral rights of the creator in accordance with the provisions set out in Article 48 (1) (a) or (h) of this Decree shall be considered as having violated the right of the creator of an invention, utility solution or industrial design.
- 3) The following acts shall not be considered as an infringement of industrial property rights:
 - a) The use of a trademark or appellation of origin for other than commercial purposes.
 - b) The distribution and use of a product bearing a trademark or appellation of origin having been put into circulation by the owner or licensee of such trademark, or a person entitled to use the appellation of origin;
 - c) The use of a product bearing a trademark or appellation of origin on any foreign vessel, aircraft, spacecraft or land vehicle which temporarily enter fire territory of Vietnam, provided that it is for the exclusive need of the vessel or in the construction or operation of the aircraft, spacecraft or land vehicle.

Article 54: Protection of industrial property rights and the right of the creators of inventions, utility solutions or industrial designs

- 1) Industrial property rights and the rights of creators of inventions, utility solutions or industrial designs shall be protected by the State. Any act of infringement of an industrial property right or the rights of creators of inventions, utility solutions or industrial designs shall be strictly prohibited and shall be dealt with by legal means according to the nature and extent of the infringement.
- 2) Actions against the infringement of industrial property rights and the rights of creators of inventions, utility solutions or industrial designs shall be raised as provided for under the provisions of the Code of Civil Procedure.

Depending on the nature and extent, the infringement of industrial property rights or rights of the creators of inventions, utility solutions or industrial designs may be dealt with by administrative, criminal or civil procedures according to the law.

Chapter VI - PATENT ATTORNEY

Article 55: Definitions

The terms used in this Chapter shall be defined as follows:

"Patent attorneys firm" refers to a business which has legally registered its activity and has been granted a Patent attorneys firm's Certificate by the National Office of industrial Property.

"Patent Attorney" refers to a professional member of a patent attorneys firm who has been granted a Patent attorney's Certificate.

"Representative" refers to both a patent attorneys firm and for a patent attorney.

"License of representation" refers to both a Patent attorneys firm's Certificate and/or a Patent attorney's Certificate granted by the National Office of Industrial Property.

Article 56: Functions and obligations of Representatives

- 1) Patent attorneys firms may carry out the following services:
 - Represent others before the National Office of Industrial Property and competent State authorities, carrying out procedures for the establishment and protection of industrial property rights;

- Counsel on matters relating to procedures for the establishment and protection of industrial property rights;
- Other services concerning procedures for the establishment and protection of industrial property rights.

2) Patent attorneys shall directly carry out the representation of the Patent attorneys firms of which they are members

Article 51: Rights and obligations of Representatives

1) Representatives shall not represent and may not act on behalf of the National Office of Industrial Property and other authorities on industrial property management.

2) Patent attorneys firms in conducting their services shall enjoy the civil rights and be subject to the obligations according to the law.

3) Only those who have been granted Patent attorney's Certificates shall be permitted to act as Representatives

A patent attorney shall work only for one patent attorneys firm of which he/she is a member.

Any service of representation shall be carried out on behalf of a patent attorneys firm, Patent attorneys firms and patent attorneys carrying out service shall be held accountable for their services.

4) Patent attorneys firms shall only act within the scope of authorisation and shall only re-authorise offer patent attorneys firms upon a written agreement of the client.

5) Patent attorneys firms shall not engaged in the following activities:

- Simultaneously representing conflicting parties;
- Withdraw an application for a Certificate, claim relinquishment of protection or withdraw an appeal related to the application procedure without clear instructions in writing.
- Divulge information concerning national security and national interests in the course of providing representative service.

6) In the course of representation, the patent attorney shall present a valid Patent attorneys Certificate.

Before entering into a service contract for representative, the patent attorneys firm and the patent attorney shall clearly inform the client about chargeable items and national fees related to the establishment and protection of industrial property rights and charges, and fees of the firm in accordance with a fee schedule registered with the National Office of Industrial Property.

Patent attorneys firms shall not mislead or unduely pressure clients in the course of a service contract for representation.

7) Patent attorneys firms and patent attorneys shall have the following obligations:

To maintain secret all information and documents related to the case of representation.

- To correctly and adequately inform the client of all notices or requests by the National Office of Industrial Property or other competent authorities; to timely supply the client with the Certificate and other decisions.
- To defend the interests of the client by timely complying with requests from the National Office of Industrial Property or other competent authorities addressed to the client;
- To advise the National Office of Industrial Property or other competent authorities of any changes of name, address and other information concerning the client, if necessary.

8) Patent attorneys firms shall relinquish their activity of representation only if all unfinished works can be legally transferred to another patent attorneys firm.

Article 68: Conditions for grant of a license of representation

1) Conditions for grant of a Patent attorney's Certificate

Only persons who adequately meet the following conditions can be granted a Certificate:

- Vietnamese citizens having capacity under civil law who are resident in Vietnam;
- Have a university degree in legal or technical sciences;
- Hold a certificate for graduation of a regular training course on industrial property or have been involved directly in professional works on industrial property legislation for 5 consecutive years or more; or have directly carried out the examination of industrial property applications in a national or international office of industrial property for 5 consecutive years or more;
- Hold a valid certificate of qualification on current industrial property law issued by the National Office of Industrial Property;
- Who are a professional member of a patent attorneys firm;
- Who are not concurrently working for a non-business State office or organisation, or for another patent attorneys firm.

2) Conditions for grant of a patent attorneys firm's Certificate:

Only organisations that adequately meet the following conditions can be granted a Certificate:

- Incorporated as Vietnamese legal persons;
- Organisations without foreign invested capital;
- Engage in services of representation; when engaged in other fields (if any legal representation or services related to science or technology shall be stipulated in the Charter and Business Registration Certificate);
- Have at least two professional members being patent attorneys, of whom one person is the head of the organisation or is authorised by the head of the organisation to represent the organisation.

Article 59: Procedure for the grant of a license of representation

The procedure for the submission and consideration of an application for grant of a license of representation shall be regulated by the Minister of Science Technology and Environment.

Article 60: Charges and fees of representation

1) Patent attorneys firms shall list the items, rate of national official charges and fees for services of representation in a schedule.

The national official charges and the fees for services of representation shall be clearly specified in the schedule, charges for services the patent attorney is not able to actually conduct shall not be included in the schedule.

2) Actual service fees (excluding national official charges) having been paid by clients shall be subject to tax in accordance with the law.

Actual service fees shall not exceed the rates provided for in the schedule. The collection of official charges and fees for services of representation shall be published and comply with regulations on finance. At the request of the competent authorities, patent attorneys firms shall be liable to report on official charges and fees for services of representation.

Article 61: Revocation of a license of representation

1) Conditions for the revocation of a license of representation:

a) The National Office of Industrial Property shall revoke a Patent attorneys firm's Certificate in the following cases:

- The patent attorneys firm has ceased to provide services of representation in matters of industrial property or the firm has ceased to exist;
- The firm no longer satisfies the criteria specified in Article 58 (2) of this Decree;
- The firm has violated provisions of law, especially the provisions of this chapter.

b) The National Office of Industrial Property shall revoke a Patent attorney's Certificate and delete the attorney's name from the list of patent attorneys in the following cases:

- The person who has been granted the Certificate does no longer provide services of representation in matters of industrial property;
- The person who has been granted the Certificate no longer adequately satisfies the criteria specified in Article 58 (1) of this Decree;
- The person who has been granted the Certificate has committed serious defaults in the course of his profession, has acted detrimental to the legitimate interests of the client or other persons or caused damage to the reputation of State bodies or/and the State.

2) The decision to revoke the license representation shall be published in the Official Gazette of Industrial Property.

3) In case the Patent attorneys firm's Certificate is revoked by the National Office of Industrial Property, all unfinished procedures to be carried out by the firm shall be suspended and the client shall be allowed to proceed with such procedures within 3 months from the date of publication of the decision to revoke the Certificate in the Official Gazette of Industrial Property.

Chapter VII - RESPONSIBILITIES OF STATE ORGANISATIONS IN INDUSTRIAL PROPERTY ACTIVITIES

Article 62: Protection of national Interests

1) Establishment and exercise of industrial property rights shall not offend the interests of the State;

2) Industrial property objects owned by State organisations or by business operations wholly or partly owned by the State shall be the property of the State. These organisations or business operations shall be obliged to defend, maintain the reputation and develop the value of such property.

3) Secret invention or utility solution:

a) Inventions or utility solutions of Vietnamese nationals concerning national defense or security or of special economic value shall be considered as secret inventions or utility solutions;

b) Creators or owners of industrial property objects and persons involved in preparing, submitting and examining the application for the grant of protect and in the use of such secret invention or utility solution shall be liable to maintain secrecy of such invention or utility solution in accordance with regulations on maintenance of national secrecy.

4) Vietnamese appellations of origin shall be national property. The right to use an appellation of origin shall belong to the owner of a Certificate of the right to use appellation of origin and shall not be transferred in any form.

5) The transfer of industrial property rights from Vietnamese natural or legal persons or other entities to foreign natural or legal persons shall be subject to approval of the Minister of Science, Technology and Environment.

Article 53: Responsibilities of competent State authorities to manage industrial property

1) The Ministry of Science, Technology and Environment shall be responsible for the organisation, implementation of regime, policy and legal provisions of the State on industrial property matters and for a consistent management of industrial property activities throughout the country.

2) The National Office of Industrial Property under the Ministry of Science, Technology and Environment shall be the competent State authority responsible for matters of industrial property. The National Office of industrial property shall be responsible for assisting the Minister of Science, Technology and Environment to fulfill the responsibilities mentioned in (1) of this Article,

The National Office of industrial Property shall have the following functions, powers and obligations:

- a) To implement the task of granting Certificates for industrial property rights at the request of natural or legal persons or other entities;
 - b) To carry out the procedures for suspension, cancellation and extension of validity of Certificates; and for the registration transfer contracts on industrial property rights;
 - c) To apply measures for the protection of legitimate interests of the State, individuals and entities in the field of industrial property; to cooperate with other State authorities and non-governmental organisations in order to apply measures for the protection of industrial property rights and ensure that the legal provisions on industrial property will be strictly implemented;
 - d) To organise information activities on Industrial Property;
 - e) To examine professional qualifications and issue licenses of representation and supervise patent attorneys firms in technical and professional aspects;
 - f) To conduct professional direction and organise technical and professional training on Industrial Property for competent authorities at the level of Ministries, localities and entities.
 - g) To conduct international cooperation activities in the field of industrial property within the scope of authorisation.
- 3) The Ministries, organs at ministerial level, organs under Government, People's Committees of provinces, Cities directly under Central Government, shall be responsible for the organisation, direction and management of industrial property activities in their branch or locality within the scope of their functions and duties.

Organs for the management of science, technology and environment at the level of branches and localities shall be responsible for assisting the heads of branches and localities to implement the above functions and directly carry out the following tasks:

- a) To propose to Ministers, Heads of Organs at ministerial level and Organs under Government, Chairmen of People's Committees of provinces and Cities measures detailing the implementation of the policies of State on industrial property and organise the implementation of such measures;
- b) To organise management system for industrial property activities in branches and localities and apply measures aimed at increasing the efficiency of such system;
- c) To organise the spreading of policies on industrial property, cooperate with non governmental organisations to conduct measures to promote innovative activities;
- d) To assist subjects under the management of branches and localities in carrying out procedures for the establishment of industrial property rights in Vietnam and abroad;
- e) To cooperate with the law-enforcing bodies in matters of industrial property rights and deal with violations of industrial property laws.

Article 64: Competency of Ministries and localities

- 1) The Ministry of Science, Technology and Environment shall be responsible for stipulating the contents of the submission, acceptance and examination procedures for applications for a Certificate for; procedures for approval and registration of transfer contracts; procedures for compulsory licensing; regulations on the management of innovative activities and for cooperating with the Ministry of Defense and the Ministry of the Interior to stipulate procedures for the application, examination and grant of Certificates and for the use, transfer and publication of secret inventions or utility solutions.
- 2) The Ministry of Finance shall cooperate with the Ministry of Science, Technology and Environment in stipulating the contents and rates of industrial property charges and fees, the regime of management and use of such fees, the maximum and minimum price for transfer of industrial property rights belonging to the State.
- 3) The Ministry of Agriculture and Rural Development shall be responsible to draft a list of agricultural specialties, to determine the growth and production areas and qualitative characteristics of such agricultural specialties and tend guidance to the concerned local People's Committees of the areas for the respective concerned persons or organisations to register appellations of origin to be used for such agricultural specialties; to cooperate with the Ministry of Science, Technology and Environment in studying and submitting to the Government Regulations on the protection of rights of persons and entities having created new plant or animal varieties.
- 4) The Ministry of Public Health shall cooperate with Ministry of Science, Technology and Environment in stipulating regulations on the use of trademarks for pharmaceutical products on the basis of compliance with regulations on trademarks in this Decree, studying and submitting Regulations to Government on the protection of rights of creators of methods for the prevention, prognosis and treatment of diseases; cooperate with the Ministry of Science, Technology and Environment and the Ministry of industry to draft a list of foods and beverages with properties and qualities characterised by geographical conditions of the place of production of such products; determine areas with such geographical conditions and propose to the concerned local People's Committees for persons and entities to register an appellation of origin to be used for such foods and beverages.
- 5) The Ministry of Education and Training shall cooperate with the Ministry of Justice and the Ministry of Science, Technology and Environment to organise the introduction industrial property as a subject of teaching at universities and colleges.
- 6) The General Customs Department shall cooperate with the Ministry of Science, Technology and Environment to stipulate measures for industrial property border controls in relation to the import and export of goods.
- 7) The Ministry of Trade shall cooperate with the Ministry of Science, Technology and Environment to regulate Industrial Property controls of goods produced and distributed in the market.
- 8) The Chairmen of f People's Committees of provinces and cities directly under the Central Government shall be responsible to draft a list of the specialties produced in the concerned localities for the purpose of guiding persons and entities to proceed with the registration of an appellation of origin belonging to such localities.

Article 65: Offenses

Acts considered offenses in matters of industrial property shall be regulated by Government in a separate Decree.

Chapter VIII - IMPLEMENTATION PROVISIONS

Article 66: Protection of consumers in exercising industrial property rights

Only the owner of an industrial property object within the term of protection shall be allowed to indicate also by way of sign on the product or in advertisement or transactions for purposes of business that a product is being protected or belongs to an exclusive right.

In case a product is manufactured under license, such indication on the product shall be compulsory in advertisements and transactions for purposes of business.

In case a product is manufactured in Vietnam under a foreign license or bears a trademark which may create the impression that the trademark is a foreign mark or has a foreign origin, an adequate and unabbreviated indication "Made in Vietnam" on the product shall be compulsory.

Article 67: Protection of industrial property rights of foreigners

- 1) Foreign natural or legal persons in the following cases shall have the right to request protection for their industrial property rights in Vietnam in accordance with the provisions of this Decree and shall enjoy all such rights and be subject to all such obligations as Vietnamese subjects:
 - a) Natural or legal persons that enjoy the rights in accordance with the Paris Convention;
 - b) Natural or legal persons belonging to countries that have signed an agreement on the mutual protection of industrial property with Vietnam or adopted the principle of reciprocity in matters of industrial property protection with regard to Vietnam for each other's natural or legal persons.
- 2) Natural or legal persons belonging to member countries of the Madrid Agreement shall enjoy all rights and be subject to all obligations related to trademarks internationally registered with the designation of Vietnam, unless such registration is refused by Vietnam.
- 3) Natural or legal persons belonging to member countries of the PCT can file an application for a Certificate for inventions or utility solutions in Vietnam in accordance with this Treaty under the procedures set out by the Minister of Science, Technology and Environment.
- 4) In the event provisions of this Decree contravene provision of international agreements to which Vietnam is a member, the provisions of such international agreements shall be applied.

Article 68: Application of the PCT and Madrid Agreement

The Ministry of Science, Technology and Environment shall set out the procedures for handling international applications for inventions or utility solutions under the PCT, procedures for handling of trademark applications with the designation of Vietnam under the Madrid Agreement and procedures for preparing and submitting an application for international registration of industrial property rights originating in Vietnam.

Article 69: Transitional provisions

- 1) Applications for the grant of protection on the basis of the Ordinance on the Protection of Industrial Property Rights dated 28 January 1989, that have already been filed with the National Office of Industrial Property before 1 July, 1996, including applications filed by mail with a date of postage prior to such date shall be handled in accordance with the Ordinance.
- 2) Certificates granted on the basis of the Regulation on innovations and inventions of 1881, the Regulation on utility solutions of 1988, the Regulation on Trademarks of 1982, the Regulation on industrial designs of 1988 or on the basis of the Ordinance on the Protection of Industrial Property Rights of 28 January 1989 shall continue to be valid under such legal instruments until the date of expiry. After the respective term of validity, the Certificates for trademarks and industrial designs shall be extended upon request in accordance with the provisions of this Decree. As from the date of renewal, all rights and obligations shall be in accordance with this Decree.
- 3) Applications for a Certificate which have been filed between 1 July 1996 and the date this Decree has been signed shall be proceeded in accordance with this Decree.

Article 70: Implementation provisions

- 1) The Ministries, heads of organisations at ministerial level, organs under Government, chairmen of the People's Committees of provinces or cities directly under Central Government and the Director General of the National Office of Industrial Property shall be responsible for implementing this Decree.
- 2) This Decree shall supersede the Regulations previously promulgated by Government on innovations and inventions (Decree 31/CP of 3 January 1981 as amended on 20 March 1990), on Trademarks (Decree 197/HDBT

of 14 December 1982 as amended on 20 March 1990, on Industrial Designs (Decree 85/HDBT of 13 May 1988 as amended on 20 March 1990), on Utility solutions (Decree 20/HDBT of 28 December 1988 as amended on 20 March 1990), on Licensing Agreements (Decree 201/HDBT dated 28 December 1988) and Decree 84/HDBT of 20 March 1890 amending the above Regulations. The provisions on innovative activities in accordance with the Regulation on Innovations to effect Technical Improvement and Rationalisation in Production and Invention (Decree 31/CP of 23 January 1981) shall remain in force until further notice.

3) This Decree shall come into force as from the date of signing. On behalf of Government.

On behalf of the government

Prime Minister

(signed and sealed)

Vo Van Kiet