

LAW ON INTELLECTUAL PROPERTY

**National Assembly of the Socialist Republic of Vietnam
Legislature XI, Session 8
(From 18 October until 29 November 2005)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates intellectual property.

PART I

General Provisions

Article 1 *Governing scope*

This Law regulates copyright, copyright related rights, industrial property rights and rights to plant varieties; and the protection of such rights.

Article 2 *Applicable entities*

This Law shall apply to Vietnamese organizations and individuals and to foreign organizations and individuals who satisfy the conditions stipulated in this Law and in any international treaty of which the Socialist Republic of Vietnam is a member.

Article 3 *Subject matter of intellectual property rights*

1. The subject matter of copyright shall comprise literary, artistic and scientific works; the subject matter of copyright related rights shall comprise performances, audio and visual fixation¹, broadcasts and satellite signals carrying coded programmes².
2. The subject matter of industrial property rights shall comprise inventions, industrial designs, designs of semi-conducting closed circuits, trade secrets³, marks⁴, trade names⁵ and geographical indications.

¹ Note: The literal translation is "audio and visual tapes and disks" but the internationally accepted term "audio and visual fixation" is used throughout. See for example the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

² Note: This is the literal translation and is used throughout. The Brussels Convention 174 Relating to Signals Transmitted by Satellite uses the term "programme-carrying signals transmitted by satellite".

³ Note: Alternative translation is "business secrets" but "trade secret(s)" is used throughout.



3. The subject matter of rights to plant varieties shall comprise plant varieties and reproductive materials.

Article 4 *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

1. *Intellectual property rights* means rights of an organization or individual to intellectual assets comprising copyright and copyright related rights, industrial property rights and rights to plant varieties.
2. *Copyright* means rights of an organization or individual to works which such organization or individual created or owns.
3. *Copyright related rights* (hereinafter referred to as *related rights*) means rights of an organization or individual to performances, audio and visual fixation, and broadcasts and satellite signals carrying coded programmes.
4. *Industrial property rights* means rights of an organization or individual to inventions, industrial designs, designs of semi-conducting closed circuits, trade secrets, marks, trade names and geographical indications which such organization or individual created or owns, and the right to prevent unfair competition.
5. *Rights to plant varieties* means rights of an organization or individual to new plant varieties which such organization or individual has selected and created, discovered and developed, or which they own.
6. *Intellectual property right holder* means an owner of intellectual property rights or an organization or individual to whom intellectual property rights are assigned by the owner.
7. *Work* means a creation of the mind in the literary, artistic or scientific sector, expressed in any mode or form.
8. *Derivative work* means a work translated from one language into another; or an adapted, modified, transformed, compiled, annotated or selected work.
9. *Published work, audio and visual fixation* means a work or audio and visual fixation which has been published with the permission of the copyright holder or related right holder in order to distribute it to the public in a reasonable amount of copies.
10. *Reproduction* means the making of one or more copies of a work, audio and visual fixation by whatever mode or in whatever form, including permanent or provisional backup of the work in electronic form.
11. *Broadcasting* means the transmission of sound or image or both sound and image of a work, performance, audio and visual fixation or broadcast to the public by wireless or landline means

⁴ Note: Alternative translations are "trademarks" and in some contexts "labels", but the internationally accepted term "marks" is used throughout as this term is used in the Trademark Law Treaty to include both trademarks (i.e. marks relating to goods) and service marks (i.e. marks relating to services)".

⁵ Note: Alternative translation is "commercial names", but the internationally accepted term "trade name(s)" is used throughout.



including satellite transmission, in such a way that the public may access such work from any place and time the public selects.

12. *Invention* means a technical solution in the form of a product or process which is intended to solve a problem by application of natural laws.
13. *Industrial design* means the outward appearance of a product embodied in three dimensional configuration, lines, colours or a combination of such elements.
14. *Semiconductor integrated circuit* means a product in its intermediate or final form in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous with IC, chip and micro-electronic circuit.
15. *Design of semi-conducting closed circuits* (hereinafter referred to as *layout design*) means a three dimensional disposition of circuit elements and their interconnections in a semi-conducting closed circuit.
16. *Mark* means any sign used to distinguish goods or services of different organizations or individuals.
17. *Collective mark* means a mark used to distinguish goods or services of members of an organization which is the owner of such mark from marks of non-members of such organization.
18. *Certification mark* means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services in order to certify the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, and the quality, accuracy, safety or other characteristic of goods or services bearing such mark.
19. *Integrated marks* means identical or similar marks registered by the same entity and intended for use on products or services which are of the same, similar or interrelated type.
20. *Well known mark* means a mark widely known by consumers throughout the territory of Vietnam.
21. *Trade name* means the designation of an organization or individual used in business activities in order to distinguish the business entity bearing such trade name from other business entities in the same business sector and area.

Business area as stipulated in this clause means the geographical area in which a business entity has its partners, customers or reputation.
22. *Geographical indication* means the sign used to identify a product as originating from a specific region, locality, territory or country.
23. *Trade secret* means information obtained from activities of financial or intellectual investment, which has not yet been disclosed and which is able to be used in business.
24. *Plant variety* means a plant grouping within a single botanical taxon of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.



25. *Protection title* means a document granted by the competent State body to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout design, mark or geographical indication; or in order to establish rights to a plant variety.

Article 5 *Application of laws*

1. The provisions of the Civil Code shall apply to intellectual property related civil matters which are not regulated by this Law.
2. Where there are any differences between the provisions on intellectual property in this Law and the provisions in other laws, the provisions in this Law shall apply.
3. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those in this Law, such international treaty shall apply.

Article 6 *Grounds for the generation and establishment of intellectual property rights*

1. Copyright shall arise at the moment a work is created and fixed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered.
2. Related rights shall arise at the moment a performance, audio and visual fixation, broadcast or satellite signal carrying coded programmes is fixed or displayed without causing loss or damage to copyright.
3. Industrial property rights shall be established as follows:
 - (a) Industrial property rights to an invention, industrial design, layout design, mark or geographical indication shall be established on the basis of a decision of the competent State body to grant a protection title in accordance with the registration procedures stipulated in this Law or the recognition of international registration pursuant to an international treaty of which the Socialist Republic of Vietnam is a member. In the case of a well known mark, industrial property rights shall be established on the basis of use and shall not be dependent on registration procedures;
 - (b) Industrial property rights to a trade name shall be established on the basis of lawful use thereof;
 - (c) Industrial property rights to a trade secret shall be established on the basis of lawful acquirement of the trade secret and maintaining confidentiality thereof;
 - (d) The right to prevent unfair competition shall be established on the basis of competitive activities in business.
4. Rights to a plant variety shall be established on the basis of a decision of the competent State body to grant a plant variety protection title in accordance with the registration procedures stipulated in this Law.

Article 7 *Limitations on intellectual property rights*

1. Intellectual property right holders shall only be permitted to exercise their rights within the scope and term of protection provided for in this Law.



2. The exercise of intellectual property rights must not infringe the interests of the State, the public interest or the legitimate rights and interests of other organizations and individuals, and must not breach other relevant provisions of law.
3. In order to assure objectives of national defence and security, the people's livelihood and other interests of the State and society stipulated in this Law, the State may prohibit or restrict the exercise of intellectual property rights by the holders thereof or may compel such holders to license one or more of their rights to other organizations or individuals on appropriate terms.

Article 8 *Policies of the State on intellectual property*

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing the interests of intellectual property right holders and the public interest; not to protect intellectual property objects which are contrary to social ethics and public order or which harm national defence and security.
2. To encourage and promote activities of creation and utilization of intellectual assets aimed at contributing to socio-economic development and improving the people's material and spiritual life.
3. To provide financial support for the receipt and use of transferred intellectual property rights servicing the public interest; to encourage Vietnamese and foreign organizations and individuals to provide financial aid for creative activities and for the protection of intellectual property rights.
4. To prioritize investment in training and fostering senior officials, public servants and other relevant subjects engaged in the work of protecting intellectual property rights and to prioritize research into and application of science and techniques for the protection of intellectual property rights.

Article 9 *Right and responsibility of organizations and individuals in the protection of intellectual property rights*

Organizations and individuals shall have the right to themselves take measures permitted by law to protect their intellectual property rights, and shall be obliged to respect the intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant laws.

Article 10 *Contents of State administration of intellectual property*

1. Formulating and directing the implementation of strategies and policies on protection of intellectual property rights.
2. Promulgating and organizing the implementation of legal instruments on intellectual property.
3. Organizing an administrative apparatus for intellectual property; training and fostering staff to administer intellectual property.
4. Granting and carrying out other procedures related to registered copyright certificates, registered related rights certificates, protection titles for industrial property objects and plant variety protection titles.
5. Inspecting and examining compliance with the law on intellectual property; settling complaints and denunciations, and dealing with breaches of the law on intellectual property.
6. Organizing information and statistics on intellectual property.



7. Organizing and administering intellectual property assessment activities.
8. Educating, and communicating and disseminating knowledge about intellectual property and the law on intellectual property.
9. Conducting international co-operation on intellectual property.

Article 11 *Responsibility for State administration of intellectual property*

1. The Government shall exercise uniform State administration of intellectual property.
2. The Ministry of Science and Technology shall be responsible before the Government to preside over co-operation with the Ministry of Culture and Information and the Ministry of Agriculture and Rural Development to carry out State administration of intellectual property and of industrial property rights.

The Ministry of Culture and Information shall, within the scope of its duties and powers, carry out State administration of copyright and related rights.

The Ministry of Agriculture and Rural Development shall, within the scope of its duties and powers, carry out State administration of rights to plant varieties.

3. Ministries and ministerial equivalent bodies shall, within the scope of their respective duties and powers, co-ordinate with the Ministry of Science and Technology, the Ministry of Culture and Information and the Ministry of Agriculture and Rural Development to carry out State administration of industrial property.
4. People's committees at all levels shall, within the scope of their authority, carry out State administration of industrial property within their respective localities.
5. The Government shall provide specific regulations on the powers and responsibilities for State administration of industrial property of the Ministry of Science and Technology, the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development Science and of people's committees at all levels.

Article 12 *intellectual property fees and charges*

Organizations and individuals shall be required to pay fees and charges when carrying out procedures related to intellectual property rights in accordance with the provisions of this Law and other related laws.

PART II

Copyright and Related Rights

CHAPTER I

Conditions for Protection of Copyright and Related Rights

SECTION 1

Conditions for Protection of Copyright



Article 13 *Authors and copyright holders with works which are protected by copyright*

1. Organizations and individuals with works which are protected by copyright comprise persons who directly create such works and copyright holders stipulated in articles 37 to 42 inclusive of this Law.
2. Authors and copyright holders stipulated in clause 1 of this article shall comprise Vietnamese organizations and individuals; foreign organizations and individuals with works published for the first time in Vietnam and not yet published in any other country, or with works also published in Vietnam within thirty days after publication for the first time in another country; and foreign organizations and individuals with works which are protected in Vietnam pursuant to an international treaty on copyright of which the Socialist Republic of Vietnam is a member.

Article 14 *Types of works which are protected by copyright*

1. Literary, artistic and scientific works which are protected by copyright comprise:
 - (a) Literary works, scientific works, textbooks, teaching courses and other works expressed in written language or other characters;
 - (b) Lectures, addresses and other speeches;
 - (c) Press works;
 - (d) Musical works;
 - (dd) Stage works;
 - (e) Cinematographic works and works created by a process analogous to cinematography (hereinafter all referred to as *cinematographic works*);
 - (g) Plastic art works and applied art works;
 - (h) Photographic works;
 - (i) Architectural works;
 - (k) Sketches, plans, maps and drawings related to topography or scientific works;
 - (l) Folklore and folk art works;
 - (m) Computer programs and data collections.
2. Derivative works shall only be protected pursuant to the provisions of clause 1 of this article if such protection is not prejudicial to the copyright in the works used to create such derivative works.
3. Protected works as stipulated in clauses 1 and 2 of this article must be created personally by authors through their intellectual labour and without copying the works of others.
4. The Government shall provide detailed guidelines on the types of works stipulated in clause 1 of this article.

Article 15 *Subject matter outside the category of copyright protection*



1. News of the day as mere items of information.
2. Legal instruments, administrative and other documents in the judicial domain, and official translations of such documents.
3. Processes, systems, operational methods, concepts, principles and data.

SECTION 2

Conditions for Protection of Related Rights

Article 16 *Organizations and individuals eligible for protection of related rights*

1. Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter all referred to as *performers*).
2. Organizations and individuals who own performances defined in clause 1 of article 44 of this Law.
3. Organizations and individuals who fix for the first time the sounds and images of performances or other sounds and images (hereinafter all referred to as *producers of audio and visual fixation*).
4. Organizations which initiate and carry out broadcasting (hereinafter referred to as *broadcasting organizations*).

Article 17 *Subject matter of related rights eligible for protection*

1. Performances shall be protected if they fall into one of the following categories:
 - (a) They are made by Vietnamese citizens in Vietnam or abroad;
 - (b) They are made by foreigners in Vietnam;
 - (c) They are fixed on audio and visual fixation and protected pursuant to the provisions of article 30 of this Law;
 - (d) They have not yet been fixed on audio and visual fixation but have already been broadcast and are protected pursuant to the provisions of article 31 of this Law;
 - (dd) They are protected pursuant to an international treaty of which the Socialist Republic of Vietnam is a member.
2. Audio and visual fixation shall be protected if it falls into one of the following categories:
 - (a) It belongs to audio and visual fixation producers bearing Vietnamese nationality;
 - (b) It belongs to audio and visual fixation producers protected pursuant to an international treaty of which the Socialist Republic of Vietnam is a member.
3. Broadcasts and satellite signals carrying coded programmes shall be protected if they fall into one of the following categories:
 - (a) They belong to broadcasting organizations bearing Vietnamese nationality;



- (b) They belong to broadcasting organizations protected pursuant to an international treaty of which the Socialist Republic of Vietnam is a member.
4. Performances, audio and visual fixation, broadcasts and satellite signals carrying coded programmes shall only be protected pursuant to the provisions of clauses 1, 2 and 3 of this article on the condition that they are not prejudicial to copyright.

CHAPTER II

Contents of, Limitations on and Term of Protection of Copyright and Related Rights

Section 1

Contents of, Limitations on and Term of Protection of Copyright

Article 18 *Copyright*

Copyright in works regulated in this Law shall comprise moral rights and economic rights⁶.

Article 19 *Moral rights*

Moral rights [of authors] shall comprise the following rights:

1. To give titles to their works.
2. To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used.
3. To publish their works or to authorize other persons to publish their works.
4. To protect the integrity of their works; and to forbid other persons to modify, edit or distort their works in whatever form, causing harm to the honour and reputation of the author.

Article 20 *Economic rights*

1. Economic rights [of authors] shall comprise the following rights:

- (a) To make derivative works;
- (b) To display their works to the public;
- (c) To reproduce their works;
- (d) To distribute or import the original or copies of their works;

⁶ Note: The literal translation is "personal rights and property rights" but the internationally accepted terminology "moral rights and economic rights" is used throughout.



- (dd) To communicate their works to the public by wireless or landline means, electronic information networks or other technical means;
 - (e) To lease the original or copies of cinematographic works and computer programs.
2. Authors or copyright holders shall exclusively exercise the rights stipulated in clause 1 of this article or may grant other persons the right to exercise such rights pursuant to the provisions of this Law.
 3. When any organization or individual exercises one, several or all of the rights stipulated in clause 1 of this article and in article 19.3 of this Law, such organization or individual must ask for permission from the copyright holder and must pay royalties, remuneration or other material benefits to the copyright holder.

Article 21 *Copyright in cinematographic works and dramatic works*

1. Persons who act as directors; screenwriters; cameramen; montage makers; music composers; art designers; studio sound, lighting and art designers; studio props and technical effects designers, and persons engaged in other creative jobs in making cinematographic works shall have the rights stipulated in clauses 1, 2 and 4 of article 19 of this Law and other rights as agreed.

Persons who act as directors, playwrights, choreographers, music composers, art designers, stage sound designers, lighting and art stage designers, stage props and technical effects designers, and persons engaged in other creative jobs in making stage works shall have the rights stipulated in clauses 1, 2 and 4 of article 19 of this Law and other rights as agreed.

2. Organizations and individuals who invest finance or material and technical facilities in the production of cinematographic works and stage works shall be holders of the rights stipulated in article 19.3 and article 20 of this Law.
3. The organizations and individuals stipulated in clause 2 of this article shall be obliged to pay royalties, remuneration or other material benefits as agreed with the persons stipulated in clause 1 of this article.

Article 22 *Copyright in computer programs and data collections*

1. *Computer program* means a set of instructions expressed in the form of commands, codes, diagrams and other forms which, when incorporated in a device readable by a computer, are capable of enabling such computer to perform a job or achieve a specific result.

Computer programs shall be protected the same as literary works, irrespective of whether the computer programs are expressed in the form of source codes or machine codes.

2. *Data collection* means a set of data selected or arranged in a creative way and expressed in electronic or other forms.

Copyright protection of data collections shall not extend to protection of the data itself, and must not be prejudicial to copyright in the data itself.

Article 23 *Copyright in folklore and folk art works*

1. *Folklore and folk art work* means a collective creation based on the traditions of a community or individuals reflecting the ambitions of such community and expressed in a form appropriate to the



cultural and social characteristics, standards and values of such community which have been handed down by imitation or other modes. Folklore and folk art works shall comprise:

- (a) Folk tales, lyrics and riddles;
 - (b) Folk songs and melodies;
 - (c) Folk dances, plays, rites and games;
 - (d) Folk art products including graphics, paintings, sculpture, musical instruments, architectural models and other artistic expressions in any material form.
2. Organizations and individuals using folklore and folk art works must cite the origins of the folklore and folk art works, and must ensure that the authentic value of such folklore and folk art works is preserved.

Article 24 *Copyright in literary, artistic and scientific works*

The Government shall issue specific regulations governing the protection of copyright in the literary, artistic and scientific works stipulated in article 14.1 of this Law.

Article 25 *Cases when published works may be used without having to seek permission or pay royalties or remuneration*

1. Published works may be used without having to seek permission or pay royalties or remuneration in the following cases:
 - (a) Making one copy of the work of an author for scientific research or teaching purposes;
 - (b) Reasonable quoting from a work in order to comment on or illustrate one's own works, without misrepresenting the author's views;
 - (c) Quoting from a work in order to write an article published in a newspaper or periodical, in a radio or television broadcast or in a documentary, without misrepresenting the author's views;
 - (d) Quoting from a work in school or university for lecturing purposes without misrepresenting the author's views and not for commercial purposes;
 - (dd) Copying of a work by a library for archival and research purposes;
 - (e) Performing a stage work or other art work in mass cultural, communication or mobilization activities without collecting fees in any form;
 - (g) Audio-visual recording of a performance in order to report current events or for teaching purposes;
 - (h) Photographing or televising plastic art; or an architectural, photographic, or applied art work displayed at a public place in order to present images of such work;
 - (i) Transcribing a work into braille or into characters of other languages for the blind;
 - (k) Importing copies of another's work for personal use.



2. Organizations and individuals who use the works stipulated in clause 1 of this article must neither affect the normal use of such works nor cause prejudice to the rights of the author or copyright holder, and must provide information being the author's name and the source and origin of the work.
3. The use of works in the cases stipulated in clause 1 of this article shall not apply to architectural works, plastic works and computer programs⁷.

Article 26 *Cases when published works may be used without having to seek permission but royalties or remuneration must be paid*

1. A broadcasting organization which uses a published work to make a broadcast which is sponsored, contains an advertisement or which collects fees in any form shall not be required to seek permission but must pay royalties or remuneration to the copyright holder in accordance with regulations of the Government.
2. Organizations and individuals who use works stipulated in clause 1 of this article must neither affect the normal use of such works nor cause prejudice to the rights of the author or copyright holder, and must provide information being the author's name and the source and origin of the work.
3. The use of works in the cases stipulated in clause 1 of this article shall not apply to cinematographic works.

Article 27 *Term of copyright protection*

1. The moral rights stipulated in clauses 1, 2 and 4 of article 19 of this Law shall be protected for an indefinite term.
2. The moral rights stipulated in article 19.3 and the economic rights stipulated in article 20 of this Law shall enjoy the following terms of protection:
 - (a) Cinematographic works, photographic works, stage works, applied art works and anonymous works shall have a term of protection of fifty (50) years as from the date of first publication. If a cinematographic work or stage work has not been published within fifty (50) years from the date of its formulation, the term of protection shall be calculated from the date of its formulation. When information on the author of an anonymous work appears, the term of protection of such work shall be calculated pursuant to sub-clause (b) below;
 - (b) Any work not stipulated in sub-clause (a) above shall be protected for the whole life of the author and for fifty (50) years after his or her death. In the case of a work of joint authors, the term of protection shall expire in the fiftieth year after the death of the last surviving co-author;
 - (c) The term of protection stipulated in sub-clauses (a) and (b) of this clause shall expire at 24:00 hours on 31 December of the year of expiration of the copyright protection term.

Article 28 *Conduct constituting infringement of copyright*

1. Appropriating copyright in a literary, artistic or scientific work.
2. Impersonating an author.

⁷ Note: This is the literal translation, although clause 1(h) does include architectural works.



3. Publishing or distributing a work without permission from the author.
4. Publishing or distributing a work of joint authors without permission from the co-authors.
5. Modifying, editing or distorting a work in any way which prejudices the honour and reputation of the author.
6. Copying a work without permission from the author or copyright holder, except in the cases stipulated in sub-clauses (a) and (dd) of article 25.1 of this Law.
7. Making a derivative work without permission from the author or copyright holder of the work used for making such derivative work, except in the case stipulated in sub-clause (i) of article 25.1 of this Law.
8. Using a work without permission from the copyright holder and without paying royalties, remuneration or other material benefits in accordance with law, except in the cases stipulated in article 25.1 of this Law.
9. Leasing out a work without paying royalties, remuneration or other material benefits to the author or copyright holder.
10. Duplicating, producing copies of, distributing, displaying or communicating a work to the public via a communications network or digital means without permission from the copyright holder.
11. Publishing a work without permission from the copyright holder.
12. Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect copyright in his or her work.
13. Deliberately deleting or modifying electronic information in a work regarding management of the rights to such work.
14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment when knowing, or having grounds to know, that such equipment may de-activate technical solutions applied by the copyright holder to protect copyright in his or her work.
15. Making and selling a work with a forged signature of the author of such work.
16. Importing, exporting or distributing copies of a work without permission from the copyright holder.

SECTION 2

Contents of, Limitations on and Term of Protection of Related Rights

Article 29 *Rights of performers*

1. Performers who are also the investors shall have the moral rights and economic rights to their performances. Where performers are not also the investors, the performers shall have the moral rights and the investors shall have the economic rights to performances.
2. Moral rights shall comprise the following rights:



- (a) To have the name acknowledged when performing, when distributing audio and visual fixation or when broadcasting performances;
 - (b) To protect the integrity of the imagery of the performance, and to prevent others from modifying, editing or distorting the work in any way prejudicial to the honour and reputation of the performer.
3. Economic rights shall include the exclusive right to exercise or to authorize others to exercise the following rights:
- (a) To formulate a live performance on audio and visual fixation;
 - (b) To directly or indirectly reproduce a performance which has been formulated on audio and visual fixation;
 - (c) To broadcast or to communicate to the public in other ways an unformulated performance so that it may be accessed by the public, except where such performance is intended to be broadcast;
 - (d) To distribute to the public an original performance and copies thereof by sale, rental or distribution by whatever technical means which are accessible by the public.
4. Any organization or individual who exploits or uses the rights stipulated in clause 3 of this article must pay remuneration to the performer in accordance with law or pursuant to an agreement if there is no relevant provision of law.

Article 30 *Rights of producers of audio and visual fixation*

1. Producers of audio and visual fixation shall have the exclusive right to exercise, or to authorize others to exercise, the following rights:
- (a) To directly or indirectly copy their audio and visual fixation;
 - (b) To distribute to the public their original audio and visual fixation and copies thereof by sale, rent or distribution by whatever technical means which are accessible by the public.
2. Producers of audio and visual fixation shall be entitled to material benefits when such recording is distributed to the public.

Article 31 *Rights of broadcasting organizations*

1. Broadcasting organizations shall have the exclusive right to exercise, or to authorize others to exercise, the following rights:
- (a) To broadcast or re-broadcast their broadcasts;
 - (b) To distribute their broadcasts to the public;
 - (c) To formulate [into a fixed form] their broadcasts;
 - (d) To reproduce formulated broadcasts.



2. Broadcasting organizations shall be entitled to material benefits when their broadcasts are recorded and distributed to the public.

Article 32 *Cases when related rights may be exercised without having to seek permission or pay royalties or remuneration*

1. Related rights may be exercised without having to seek permission or pay royalties or remuneration in the following cases:
 - (a) Making one copy of a work for personal scientific research purposes;
 - (b) Making one copy of a work for teaching purposes, except for performances, audio and visual fixation or broadcasts which have been published for teaching purposes;
 - (c) Reasonable quoting from a work in order to provide information;
 - (d) Making of provisional copies of a work by a broadcasting organization for broadcasting purposes when such organization has the broadcasting right.
2. Organizations and individuals who use works stipulated in clause 1 of this article must neither affect the normal use of performances, audio and visual fixation or broadcasts; nor cause prejudice to the rights of performers, producers of audio and visual fixation, or broadcasting organizations.

Article 33 *Cases when related rights may be exercised without having to seek permission but when royalties or remuneration must be paid*

1. Organizations and individuals who exercise related rights in the following cases shall not be required to seek permission but must pay agreed royalties or remuneration to performers, producers of audio and visual fixation, or to broadcasting organizations:
 - (a) They directly or indirectly use published audio and visual fixation for commercial purposes in making broadcasts which are sponsored, contain advertisements or which collect fees in any form;
 - (b) They use published audio and visual fixation in business or commercial activities.
2. Organizations and individuals who use works stipulated in clause 1 of this article must neither affect the normal use of performances, audio and visual fixation or broadcasts; nor cause prejudice to the rights of performers, producers of audio and visual fixation or broadcasting organizations.

Article 34 *Term of protection of related rights*

1. The rights of performers shall be protected for fifty (50) years calculated from the year following the year of formulation [into a fixed form] of a performance.
2. The rights of producers of audio and visual fixation shall be protected for fifty (50) years calculated from the year following the year of publication, or fifty (50) years calculated from the year following the year of formulation of any unpublished audio and visual fixation.
3. The rights of broadcasting organizations shall be protected for fifty (50) years calculated from the year following the year of the making of a broadcast.



4. The terms of protection stipulated in clauses 1, 2 and 3 of this article shall expire at 24:00 hrs on 31 December of the year of expiration of the term of protection of the related rights.

Article 35 *Conduct constituting infringement of related rights*

1. Appropriating the rights of a performer, producer of audio and visual fixation, or of a broadcasting organization.
2. Impersonating a performer, producer of audio and visual fixation, or a broadcasting organization.
3. Publishing, producing and distributing a formulated performance, audio and visual fixation or a broadcast without permission from the performer, producer of the audio and visual fixation or from the broadcasting organization.
4. Modifying, editing or distorting a performance in any way which prejudices the honour and reputation of the performer.
5. Copying or reciting from a formulated performance, audio and visual fixation or a broadcast without permission from the performer, producer of the audio and visual fixation or from the broadcasting organization.
6. Deliberately deleting or modifying electronic information regarding management of rights without permission from the related right holder.
7. Deliberately destroying or de-activating the technical solutions applied by the related right holder to protect his or her rights.
8. Publishing, distributing or importing for public distribution performances, copies of a fixed performance or audio and visual fixation knowing, or having grounds to know, that electronic information regarding management of rights has been deleted or modified without permission from the related right holder.
9. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing out equipment knowing, or having grounds to know, that such equipment helps to illegally decode satellite signals carrying coded programmes.
10. Deliberately receiving or relaying satellite signals carrying coded programmes without permission from the legal distributor.

CHAPTER III

Copyright Holders, and Related Rights Holders

Article 36 *Copyright holders*

Copyright holder means an organization or individual who holds one, several or all of the economic rights stipulated in article 20 of this Law.

Article 37 *Copyright holders being authors*



Authors who use their own time, finance and material or technical facilities to create works shall have the moral rights stipulated in article 19 and the economic rights stipulated in article 20 of this Law.

Article 38 *Copyright holders being co-authors*

1. Co-authors who use their time, finance and material or technical facilities to jointly create works shall share the rights to such works stipulated in articles 19 and 20 of this Law.
2. A co-author as defined in clause 1 of this article who has jointly created a work, a separate part of which is detachable for independent use without prejudice to the parts of the work of the other co-authors, shall have the rights to such separate part stipulated in articles 19 and 20 of this Law.

Article 39 *Copyright holders being organizations and individuals who assign tasks to authors or who enter into contracts with authors*

1. Any organization which assigns the task of creating a work to an author who belongs to such organization shall be the holder of the rights stipulated in articles 19.3 and 20 of this Law, unless otherwise agreed.
2. Any organization or individual who enters into a contract with an author for the creation of a work shall be the holder of the rights stipulated in articles 19.3 and 20 of this Law, unless otherwise agreed.

Article 40 *Copyright holders being heirs*

Any organization or individual who inherits copyright in accordance with the law on inheritance shall be the holder of the rights stipulated in articles 19.3 and 20 of this Law.

Article 41 *Copyright holders being assignees of rights*

Any organization or individual who is contractually assigned one, several or all of the rights stipulated in articles 19.3 and 20 of this Law shall be the copyright holder.

Article 42 *Copyright holders being the State*

1. The State shall be the holder of copyright in the following works:
 - (a) Anonymous works;
 - (b) Works for which the term of protection has not expired but the copyright holder died without leaving an heir or the heir renounced the inheritance or was deprived of the right to inherit;
 - (c) Works for which the ownership right was assigned to the State by the copyright holder.
2. The Government shall issue detailed regulations governing the use of works under State ownership.

Article 43 *Works belonging to the public*

1. Any work whose term of protection has expired pursuant to article 27 of this Law shall belong to the public.
2. All organizations and individuals shall be entitled to use the works stipulated in clause 1 of this article but must respect the moral rights of authors stipulated in article 19 of this Law.



3. The Government shall issue detailed regulations governing the use of works belonging to the public.

Article 44 *Related right holders*

1. Organizations and individuals who use their time and make a financial investment in or use their material and technical facilities to give a performance shall be the owners of such performance unless otherwise agreed with the parties concerned.
2. Organizations and individuals who use their time and make a financial investment in or use their material and technical facilities to produce audio and visual fixation shall be the owners of such audio and visual fixation unless otherwise agreed with the parties concerned.
3. Broadcasting organizations shall be the owners of their broadcasts unless otherwise agreed with the parties concerned.

CHAPTER IV

Transfer of Copyright and Related Rights

SECTION 1

Assignment of Copyright and Related Rights

Article 45 *General provisions on assignment of copyright and related rights*

1. *Assignment of copyright and related rights* means the transfer by copyright holders or related right holders of the ownership of the rights stipulated in articles 19,3, 20, 29.3, 30 and 31 of this Law to other organizations and individuals pursuant to a contract or in accordance with a relevant provision of law.
2. Authors shall not be permitted to assign the moral rights stipulated in article 19 of this Law, except for the right of publication. Performers shall not be permitted to assign the moral rights stipulated in article 29.2 of this Law.
3. Where a work, performance, audio and visual fixation or broadcast is under joint ownership, the assignment thereof must be agreed upon by all co-owners. In a case of joint ownership of a work, performance, audio and visual fixation or broadcast which is composed of separate parts detachable for independent use, copyright holders or related right holders may assign their copyright or related rights in their separate parts to other organizations or individuals.

Article 46 *Contracts for the assignment of copyright or related rights*

1. A contract for the assignment of copyright or related rights must be made in writing and include the following principal contents:
 - (a) Names and addresses of the assignor and the assignee;
 - (b) Grounds for the assignment;
 - (c) Price and method of payment;



- (d) Rights and obligations of the parties;
 - (dd) Liability for contractual breach.
2. The performance, amendment, termination or cancellation of a contract for the assignment of copyright or related rights must comply with the provisions of the Civil Code.

SECTION 2

Licensing of Copyright and Related Rights

Article 47 *General provisions on licensing of copyright and related rights*

1. *Licensing of copyright and related rights* means the grant of permission by the copyright holder or related right holder for another organization or individual to use for a definite term one, several or all of the rights stipulated in articles 19,3, 20, 29.3, 30 and 31 of this Law.
2. Authors shall not be permitted to license the moral rights stipulated in article 19 of this Law, except for the right of publication. Performers shall not be permitted to license the moral rights specified in article 29.2 of this Law.
3. Where a work, performance, audio and visual fixation or broadcast is under joint ownership, the licensing of copyright or related rights therein must be agreed upon by all co-owners. In a case of joint ownership of a work, performance, audio and visual fixation or broadcast which is composed of separate parts detachable for independent use, copyright holders or related right holders may license their copyright or related rights in their separate parts to other organizations or individuals.
4. Any organization or individual to whom copyright or related rights are licensed shall be permitted to license other organizations and individuals after obtaining permission from the copyright holder or related right holder.

Article 48 *Contracts for the licensing of copyright or related rights*

1. A contract for the licensing of copyright or related rights must be made in writing and include the following principal contents:
 - (a) Full names and addresses of the licensor and the licensee;
 - (b) Grounds for the licence;
 - (c) Scope of the licence;
 - (d) Price and method of payment;
 - (dd) Rights and obligations of the parties;
 - (e) Liability for contractual breach.
2. The performance, amendment, termination or cancellation of a contract for the licensing of copyright or related rights must comply with the provisions of the Civil Code.



CHAPTER V

Certificates of Registered Copyright and Related Rights

Article 49 *Registration of copyright and related rights*

1. *Registration of copyright and related rights* means the filing of an application with a file enclosed (hereinafter referred to as *application*) by an author, copyright holder or related rights holder with the competent State body in order to record information on the author, the work, the copyright holder and the related rights holder.
2. The filing of an application for grant of a certificate of registered copyright or a certificate of registered related rights shall not be a compulsory pre-requisite for entitlement to copyright or related rights in accordance with the provisions of this Law.
3. Organizations and individuals who are granted certificates of registered copyright or certificates of registered related rights shall not bear the burden of proving such copyright or related rights in a dispute, unless contrary proof is tendered.

Article 50 *Applications for registration of copyright or related rights*

1. Authors, copyright holders and related rights holders may directly file, or may authorize other organizations or individuals to file, applications for registration of copyright or related rights.
2. An application for registration of copyright or related rights shall comprise:

- (a) A declaration for registration of copyright or related rights.

A declaration must be made in Vietnamese and signed by the author, copyright holder, related rights holder or person authorized to file the application; and must include complete information on the applicant, author, copyright holder or related rights holder; the summarized content of the work, performance, audio and visual fixation or broadcast; the name of the author, and the title of the work used to make the derivative work if the work to be registered is a derivative work; the date, place and form of publication; and an undertaking accepting liability for the information set out in the application.

The Ministry of Culture and Information shall regulate the sample form of a declaration for registration of copyright or related rights.

- (b) Two copies of the work the subject of the application for copyright registration, or two copies of the formulated object the subject of the application for related rights registration;
- (c) A letter of authorization where the applicant is an authorized person;
- (d) Documents proving the right to file the application where the applicant acquires such right by way of inheritance, succession or assignment;
- (dd) Written consent of the co-authors in the case of a work under joint authorship;
- (e) Written consent of the co-owners if the copyright or related rights are jointly owned.



3. The documents stipulated in sub-clauses (c), (d), (dd) and (e) of clause 2 of this article must be written in Vietnamese. Documents in a foreign language must be translated into Vietnamese.

Article 51 *Authority to grant registered copyright certificates and registered related rights certificates*

1. The State administrative body for copyright and related rights shall have the right to grant registered copyright certificates and registered related rights certificates.
2. The State administrative body authorized to grant registered copyright certificates and registered related rights certificates shall have the right to re-grant, renew or cancel such certificates.
3. The Government shall issue regulations governing the conditions, order and procedures for re-granting, renewal or cancellation of registered copyright certificates and registered related rights certificates.
4. The Ministry of Culture and Information shall regulate the sample forms of registered copyright certificates and registered related rights certificates.

Article 52 *Time-limit for granting registered copyright certificates and registered related rights certificates*

The State administrative body for copyright and related rights shall be responsible to grant a registered copyright certificate or registered related rights certificate to the applicant, or shall notify the applicant in writing in a case of refusal to grant a certificate, within a time-limit of fifteen (15) working days from the date of receipt of a valid application.

Article 53 *Validity of registered copyright certificates and registered related rights certificates*

1. Registered copyright certificates and registered related rights certificates shall be valid throughout the entire territory of Vietnam.
2. Any registered copyright certificate or registered related rights certificate which was granted by the State administrative body for copyright and related rights before the effective date of this Law, shall continue to be valid.

Article 54 *Official recording and publication of registered copyright and registered related rights*

1. Registered copyright certificates and registered related rights certificates shall be officially recorded in the National Register of Copyright and Related Rights.
2. Decisions on the grant, re-grant, renewal and cancellation of effectiveness of registered copyright certificates and registered related rights certificates shall be published in the Official Gazette on copyright and related rights.

Article 55 *Re-grant, renewal and cancellation of effectiveness of registered copyright certificates and registered related rights certificates*

1. Where a registered copyright certificate or registered related rights certificate is lost or damaged, or where the copyright holder or related rights holder is changed, the competent State body stipulated in article 51.2 of this Law shall conduct procedures for the re-grant or renewal of such certificate.
2. Where the grantee of a registered copyright certificate or registered related rights certificate is not the author, copyright holder or related rights holder; or where the registered work, audio and visual



fixation or broadcast is ineligible for protection, the competent State body stipulated in article 51.2 of this Law shall cancel the effectiveness of such certificate.

3. Any organization or individual who discovers that the grant of a registered copyright certificate or registered related rights certificate was contrary to law shall be entitled to request the State administrative body for copyright and related rights to cancel the effectiveness of such certificate.

CHAPTER VI

Representation, Consultancy and Services Regarding Copyright and Related Rights

Article 56 *Organizations acting as collective representatives of copyright or related rights*

1. *An organization acting as the collective representative of copyright or related rights* means a non-profit making organization established pursuant to an agreement between authors, copyright holders or related right holders and operating pursuant to the law on protection of copyright and related rights.
2. An organization acting as the collective representative of copyright or related rights may conduct the following activities pursuant to authorization from authors, copyright holders or related right holders:
 - (a) Manage copyright or related rights; conduct negotiations for licensing; and collect and distribute royalties, remuneration and other material benefits from the permitted exercise of authorized rights;
 - (b) Protect the legitimate rights and interests of its members; organize a conciliation if a dispute arises.
3. An organization acting as the collective representative of copyright or related rights shall have the following rights and duties:
 - (a) To encourage creative and other social activities;
 - (b) To co-operate with counterparts in international and national organizations on the protection of copyright and related rights;
 - (c) To make periodic and one-off reports to competent State bodies on its collective representative activities;
 - (d) Other rights and duties stipulated by law.

Article 57 *Consultancy and service organizations regarding copyright and related rights*

1. Consultancy and service organizations regarding copyright and related rights shall be permitted to be established and operate in accordance with law.
2. A consultancy and service organizations regarding copyright and related rights may conduct the following activities at the request of authors, copyright holders and related right holders:
 - (a) Provide consultancy on issues related to the law on copyright and related rights;



- (b) Carry out, on behalf of and pursuant to authorization from copyright holders and related right holders, procedures for filing applications for registration of copyright and related rights;
- (c) Participate pursuant to authorization in other legal relationships on copyright, related rights and protection of legitimate rights and interests of authors, copyright holders and related right holders.

PART III

Industrial Property Rights

CHAPTER VII

Conditions for Protection of Industrial Property Rights

SECTION 1

Conditions for Protection of Inventions

Article 58 *General conditions for inventions to be eligible for protection*

1. An invention shall be eligible for protection in the form of the grant of an invention patent when it satisfies the following conditions:
 - (a) It is novel;
 - (b) It is of an inventive nature;
 - (c) It is susceptible of industrial application.
2. Unless an invention is common knowledge, it shall be protected in the form of the grant of a utility solution patent when it satisfies the following conditions:
 - (a) It is novel;
 - (b) It is susceptible of industrial application.

Article 59 *Objects ineligible for protection as inventions*

The following objects shall be ineligible for protection as inventions:

1. Scientific discoveries or theories, mathematical methods.
2. Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games and doing business; computer programs.
3. Presentations of information.
4. Solutions of aesthetic characteristics only.



5. Plant varieties, animal breeds.
7. Processes of plant or animal production which are principally of a biological nature, other than microbiological processes.
8. Human and animal disease prevention methods, diagnostic and treatment methods.

Article 60 *Novelty of inventions*

1. An invention shall be deemed novel if it has not yet been publicly disclosed by use or by means of a written description or any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the invention registration application.
2. An invention shall be deemed not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.
3. An invention shall not be deemed to have lost its novelty if it is published in the following cases, provided that the invention registration application is filed within six (6) months from the date of publication:
 - (a) It is published by another person without permission from the person having the right to register it as defined in article 86 of this Law;
 - (b) It is published in the form of a scientific presentation by the person having the right to register it as defined in article 86 of this Law;
 - (c) It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in article 86 of this Law.

Article 61 *Inventive nature of inventions*

An invention shall be deemed to be of an inventive nature if, based on technical solutions already publicly disclosed by use or by means of a written description or any other form either inside or outside Vietnam prior to the filing date or the priority date as applicable of the application for registration of the invention, the invention constitutes inventive progress and cannot be easily created by a person with average knowledge in the art.

Article 62 *Inventions which are susceptible of industrial application*

An invention shall be deemed to be susceptible of industrial application if it is possible to realize mass manufacture or production of products or repeated application of the process which is the subject matter of the invention, and to achieve stable results.

SECTION 2

Conditions for Protection of Industrial Designs

Article 63 *General conditions for industrial designs to be eligible for protection*

1. An industrial design shall be eligible for protection when it satisfies the following conditions:



- (a) It is novel;
- (b) It is of a creative nature;
- (c) It is susceptible of industrial application.

Article 64 *Objects ineligible for protection as industrial designs*

The following items shall be ineligible for protection as industrial designs:

- 1. Outward appearance of a product which is necessarily due to the technical features of the product.
- 2. Outward appearance of civil or industrial construction works.
- 3. Shape of a product which is invisible during the use of the product.

Article 65 *Novelty of industrial designs*

- 1. An industrial design shall be deemed to be new if it significantly differs from other industrial designs which have been publicly disclosed by use or by means of written descriptions or in any other form either inside or outside Vietnam prior to the filing date or the priority date, as applicable, of the application for registration of the industrial design.
- 2. Two industrial designs shall not be deemed to be significantly different from each other if they are only different in features of appearance which are not easily noticeable and memorable and which cannot be used to distinguish such industrial designs overall.
- 3. An industrial design shall be deemed not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.
- 4. An industrial design shall be deemed not to have lost its novelty if it is published in the following cases, provided that the application for registration of the industrial design is filed within six (6) months from the date of publication:
 - (a) It is published by another person without permission from the person having the right to register it as defined in article 86 of this Law;
 - (b) It is published in the form of a scientific presentation by the person having the right to register it as defined in article 86 of this Law;
 - (c) It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in article 86 of this Law.

Article 66 *Creativity of industrial designs*

An industrial design shall be deemed to be creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form either inside or outside Vietnam before the filing date or the priority date, as applicable, of the application for registration of the industrial design, the industrial design cannot be easily created by a person with average knowledge in the art.

Article 67 *Industrial designs which are susceptible of industrial application*



An industrial design shall be deemed to be susceptible of industrial application if it can be used as a model for mass manufacture of products with the outward appearance embodying such industrial design by industrial or handicraft methods.

SECTION 3

Conditions for Protection of Layout Designs

Article 68 *General conditions for layout designs to be eligible for protection*

A layout design shall be eligible for protection when it satisfies the following conditions:

1. It is original.
2. It is commercially novel.

Article 69 *Objects ineligible for protection as layout designs*

The following items shall be ineligible for protection as layout designs:

1. Principles, processes, systems and methods operated by semiconductor integrated circuits.
2. Information or software contained in semiconductor integrated circuits.

Article 70 *Originality of layout designs*

1. A layout design shall be deemed to be original if it satisfies the following conditions:
 - (a) It is the result of its author's creative labour;
 - (b) It was not widely known among creators of layout designs or manufacturers of semi-conducting closed circuits at the time of its creation.
2. A layout design which is a combination of elements and common interconnections shall be deemed to be original only if such combination, taken overall, is original pursuant to the provisions of clause 1 of this article.

Article 71 *Commercial novelty of layout designs*

1. A layout design shall be deemed to be commercially novel if it has not yet been commercially exploited anywhere in the world prior to the filing date of the application for registration.
2. A layout design shall not be deemed to have lost its commercial novelty if the application for registration of the layout design is filed within two years from the date it was commercially exploited for the first time anywhere in the world by the person who has the right to register it as defined in article 86 of this Law or by his or her licensee.
3. Commercial exploitation of a layout design as stipulated in clause 2 of this article means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of such layout design, or of a commodity containing such semiconductor integrated circuit.



SECTION 4

Conditions for Protection of Marks

Article 72 *General conditions for marks to be eligible for protection*

A mark shall be eligible for protection when it satisfies the following conditions:

1. It is a visible sign in the form of letters, words, drawings or images including holograms, or a combination thereof, represented in one or more colours.
2. It is capable of distinguishing goods or services of the mark owner from those of other subjects.

Article 73 *Signs ineligible for protection as marks*

The following signs shall be ineligible for protection as marks:

1. Signs identical with or confusingly similar to national flags or national emblems.
2. Signs identical with or confusingly similar to emblems, flags, armorial bearings, abbreviated names or full names of Vietnamese State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations or socio-professional organizations or with international organizations, unless permitted by such bodies or organizations.
3. Signs identical with or confusingly similar to real names, aliases, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries.
4. Signs identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by such organizations.
5. Signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services.

Article 74 *Distinctiveness of marks*

1. A mark shall be deemed to be distinctive if it consists of one or more easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into the cases stipulated in clause 2 of this article.
2. A mark shall be deemed to be indistinctive if it is a sign falling into one of the following categories:
 - (a) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such sign has been widely used and recognized as a mark;
 - (b) Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;
 - (c) Signs indicating time, place and method of production; category, quantity, quality, properties, ingredients, use, value or other characteristics descriptive of goods or services, except where such sign has acquired distinctiveness by use before the filing of the application for registration of the mark;



- (d) Signs describing the legal status and business sector of business entities;
- (dd) Signs indicating the geographical origin of goods or services, except where such sign has been widely used and recognized as a mark or registered as a collective mark or certification mark as stipulated in this Law;
- (e) Signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of applications for registration with earlier filing dates or priority dates, as applicable, including applications for registration of marks filed pursuant to a treaty of which the Socialist Republic of Vietnam is a member;
- (g) Signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;
- (h) Signs identical with or confusingly similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than five years, except where the ground for such invalidation was non-use of the mark pursuant to sub-clause (d) of article 95.1 of this Law;
- (i) Signs identical with or confusingly similar to another person's mark recognized as a well known mark which has been registered for goods or services which are identical with or similar to those bearing such well known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well known mark or the mark registration was aimed at taking advantage of the reputation of the well known mark;
- (k) Signs identical with or similar to another person's trade name currently in use if the use of such sign may cause confusion to consumers as to the origin of goods or services;
- (l) Signs identical with or similar to a protected geographical indication if the use of such sign may mislead consumers as to the geographical origin of goods;
- (m) Signs identical with, containing or being translated or transcribed from protected geographical indications for wines or spirits if such sign has been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
- (n) Signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an application for registration of an industrial design with a filing date or priority date earlier than that of the application for registration of the mark.

Article 75 Criteria for evaluation of whether or not a mark is well known

The following criteria shall be taken into account when considering whether or not a mark is well known:

1. The number of relevant consumers who were aware of the mark by purchase or use of goods or services bearing the mark, or from advertising.
2. The territorial area in which goods or services bearing the mark are circulated.
3. Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods sold or services provided.
4. Duration of continuous use of the mark.



5. Wide reputation of goods or services bearing the mark.
6. Number of countries protecting the mark.
7. Number of countries recognizing the mark as a well known mark.
8. Assignment price, licensing price, or investment capital contribution value of the mark.

SECTION 5

Conditions for Protection of Trade Names

Article 76 *General conditions for trade names to be eligible for protection*

A trade name shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business sector and locality.

Article 77 *Objects ineligible for protection as trade names*

Names of State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations and other entities not involved in business activities shall not be protected as trade names.

Article 78 *Distinctiveness of trade names*

A trade name shall be deemed to be distinctive when it satisfies the following conditions:

1. It consists of a proper name, except where the proper name was widely known by use.
2. It is not identical with or confusingly similar to a trade name which was used earlier by another person in the same business sector and locality.
3. It is not identical with or confusingly similar to another person's mark or a geographical indication which was protected before the date of use of such trade name.

SECTION 6

Conditions for Protection of Geographical Indications

Article 79 *General conditions for geographical indications to be eligible for protection*

A geographical indication shall be eligible for protection when it satisfies the following conditions:

1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication.
2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication.

Article 80 *Objects ineligible for protection as geographical indications*



The following objects shall be ineligible for protection as geographical indications:

1. Names or indications which have become generic names of goods in Vietnam.
2. Geographical indications of foreign countries where they are not, or no longer, protected or used.
3. Geographical indications identical with or similar to a protected mark, where the use of such geographical indication is likely to cause confusion as to the origin of products.
4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.

Article 81 *Reputation, quality and characteristics of products bearing geographical indications*

1. Reputation of products bearing a geographical indication shall be determined on the basis of the trust of consumers in such products to the extent such products are widely known to and selected by consumers.
2. Quality and characteristics of products bearing a geographical indication shall be determined by one or more qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical means or by experts with appropriate testing methods.

Article 82 *Geographical conditions relevant to geographical indications*

1. *Geographical conditions relevant to a geographical indication* means natural and human factors decisive to reputation, quality and characteristics of products bearing such geographical indication.
2. Natural factors shall include climatic, hydrological, geological, topographical and ecological factors and other natural conditions.
3. Human factors shall include skills and expertise of producers, and traditional production processes of localities.

Article 83 *Geographical areas bearing geographical indications*

Geographical areas bearing geographical indications must have their boundaries accurately determined by words and by maps.

SECTION 7

Conditions for Protection of Trade Secrets

Article 84 *General conditions for trade secrets to be eligible for protection*

A trade secret shall be eligible for protection when it satisfies the following conditions:

1. It is neither common knowledge nor easily obtainable.
2. When used in business activities, the trade secret will create for its holder advantages over those who do not hold or use it.



3. The owner of the trade secret maintains its secrecy by necessary means so that the secret will not be disclosed nor be easily accessible.

Article 85 *Objects ineligible for protection as trade secrets*

The following confidential information shall be ineligible for protection as trade secrets:

1. Personal identification secrets.
2. State management secrets.
3. National defence and security secrets.
4. Other confidential information unrelated to business.

CHAPTER VIII

Establishment of Industrial Property Rights to Inventions, Industrial Designs, Layout Designs, Marks and Geographical Indications

SECTION 1

Registration of Inventions, Industrial Designs, Layout Designs, Marks and Geographical Indications

Article 86 *Right to register inventions, industrial designs and layout designs*

1. The following organizations and individuals shall have the right to register inventions, industrial designs and layout designs:
 - (a) Authors who have created inventions, industrial designs or layout designs by their own labour and at their own expense;
 - (b) Organizations or individuals who have supplied funds and material facilities to authors in the form of job assignment or hiring, unless otherwise agreed by the parties involved and provided that such agreements are not contrary to the provisions of clause 2 of this article.
2. The Government shall provide regulations on the right to register inventions, industrial designs and layout designs created by using material and technical facilities and funds from the State Budget.
3. Where a number of organizations and individuals have jointly created or invested in the creation of an invention, industrial design or layout design, such organizations and individuals shall all have the registration right which may only be exercised with the consensus of all.
4. A person who has the registration right as stipulated in this article may assign such right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, even where a registration application has already been filed.

Article 87 *Right to register marks*



1. Organizations and individuals shall have the right to register marks to be used for goods such organizations or individuals produce or for services such organizations or individuals provide.
2. Any organization or individual lawfully engaged in commercial activities shall have the right to register a mark for a product which the latter puts onto the market but which was manufactured by others, provided that the manufacturer does not use such mark for a product and does not object to such registration.
3. Lawfully established collective organizations shall have the right to register collective marks to be used by the members of the collective organization pursuant to the regulations of the collective organization on use of collective marks. For signs indicating geographical origins of goods or services, an organization with the right to register means a local collective organization of [other] organizations or individuals engaged in production or trading in the relevant locality.
4. Organizations with the function of controlling and certifying quality, properties, origin or other relevant criteria of goods or services shall have the right to register certification marks, provided that such organizations are not engaged in production or trading of such goods or services.
5. Two or more organizations or individuals shall have the right to jointly register a mark in order to become its co-owners on the following conditions:
 - (a) Such mark is used in the names of all co-owners or used for goods or services which are produced or traded with the participation of all co-owners;
 - (b) The use of such mark does not cause confusion to consumers as to the origin of goods or services.
6. Persons with the registration right stipulated in clauses 1, 2, 3, 4 and 5 of this article, including those who have already filed registration applications, may assign the registration right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, provided that the assignee satisfies the conditions applicable to persons with the registration right.
7. For a mark protected in a country being a contracting party to a treaty of which the Socialist Republic of Vietnam is a member, which treaty prohibits the representative or agent of a mark owner from registering such mark, the representative or agent shall not be permitted to register such mark without agreement from the mark owner unless there is a justifiable reason.

Article 88 *Right to register geographical indications*

The right to register Vietnamese geographical indications belongs to the State.

The State shall permit organizations and individuals producing products bearing geographical indications, collective organizations representing such organizations or individuals, and administrative bodies of localities to which such geographical indications pertain, to exercise the right to register geographical indications. Persons who exercise the right to register geographical indications shall not become owners of such geographical indications.

Article 89 *Methods of filing an application for registration of establishment of industrial property rights*

1. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.



2. Foreign individuals not permanently residing in Vietnam and foreign organizations and individuals without production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights through their lawful representatives in Vietnam.

Article 90 *"First to file" principle*

1. Where two or more applications for registration are filed by different parties for the same invention, for registration of industrial designs identical with or insignificantly different from each other, for registration of marks identical with or confusingly similar to each other, or for identical or similar goods or services, a protection title may only be granted to the valid application with the earliest priority or filing date amongst applications which satisfy all conditions for the grant of a protection title.
2. Where there are two or more applications satisfying all the conditions for the grant of a protection title and having the same earliest priority or filing date, a protection title may only be granted to a single application from such applications with agreement from all applicants. Without such an agreement, all such applications shall be refused the grant of a protection title.

Article 91 *Priority principle*

1. An applicant for registration of an invention, industrial design or mark may claim priority on the basis of the first application for registration of protection of the subject matter if the following conditions are fully satisfied:
 - (a) The first application was filed in Vietnam or in a country being a contracting party to a treaty of which the Socialist Republic of Vietnam is also a member, containing provisions on priority right, or in a country which has agreed with Vietnam to apply such provisions;
 - (b) The applicant is a citizen of Vietnam or of a country defined in sub-clause (a) of this clause, who resides or has a production or business establishment in Vietnam or in a country defined in sub-clause (a) of this clause;
 - (c) The claim for the priority right is clearly stated in the application and a copy of the first application certified by the receiving office is enclosed;
 - (d) The application is filed within the time-limit provided for in a treaty of which Vietnam is a member.
2. In an application for registration of an invention, industrial design or mark, the applicant may claim the priority right on the basis of different earlier filed applications, provided that the similarity between the contents of such earlier applications and the present application are indicated.
3. An application for registration of industrial property which enjoys priority right shall bear the priority date being the filing date of the first application.

Article 92 *Protection titles*

1. A protection title shall recognize the owner of the invention, industrial design, layout design or mark (hereinafter all referred to as *protection title owners*); the author of the invention, industrial design or layout design; and the subject matter, scope and term of protection.



2. A protection title of a geographical indication shall record the organization managing such geographical indication, the organization or individual having the right to use such geographical indication, the protected geographical indication, the particular characteristics of products bearing such geographical indication, and the particular characteristics of geographical conditions and geographical areas bearing such geographical indication.
3. Protection title shall include an invention patent, utility solution patent, industrial design patent, certificate of registered design of semi-conducting closed circuits, certificate of registered mark and certificate of registered geographical indication.

Article 93 *Validity of protection titles*

1. Protection titles shall be valid throughout the entire territory of Vietnam.
2. An invention patent shall be valid from the grant date until the end of twenty (20) years after the filing date.
3. A utility solution patent shall be valid from the grant date until the end of ten (10) years after the filing date.
4. An industrial design patent shall be valid from the grant date until the end of five (5) years after the filing date and may be renewed for two consecutive terms, each of five (5) years.
5. A certificate of registered design of semi-conducting closed circuits shall be valid from the grant date until the earliest date among the following:
 - (a) The end of ten (10) years after the filing date;
 - (b) The end of ten (10) years after the date the layout design was first commercially exploited anywhere in the world by a persons with the registration right or his or her licensee;
 - (c) The end of fifteen (15) years after the date of creation of the layout design.
6. A certificate of registered mark shall be valid from the grant date until the end of ten (10) years after the filing date and may be renewed for many consecutive terms, each of ten (10) years.
7. A certificate of registered geographical indication shall have indefinite validity starting from the grant date.

Article 94 *Maintenance and extension of validity of protection titles*

1. In order to maintain the validity of an invention patent or a utility solution patent, the owner must pay a validity maintenance fee.
2. In order to have the validity of an industrial design patent or a certificate of registered mark extended, the owner must pay a validity extension fee.
3. Fee rates and procedures for maintaining or extending validity of protection titles shall be stipulated by the Government.

Article 95 *Termination of validity of protection titles*

1. The validity of a protection title shall be terminated in the following cases:



- (a) The owner fails to pay the stipulated validity maintenance or extension fee;
 - (b) The owner declares relinquishment of the industrial property rights;
 - (c) The owner no longer exists, or the owner of a certificate of registered mark is no longer engaged in business activities and does not have a lawful heir;
 - (d) The mark has not been used by its owner or the licensee of the owner without justifiable reason for five (5) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (3) months before the request for termination;
 - (dd) The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;
 - (e) The owner of a certificate of registered certification mark violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;
 - (g) The geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products.
2. Where the owner of an invention protection title fails to pay the validity maintenance fee before the stipulated time-limit, the validity of such protection title shall, upon the expiration of such time-limit, automatically terminate as from the first day of the first valid year for which the validity maintenance fee has not been paid. The State administrative body for industrial property rights shall record such termination in the National Register of Industrial Property and publish it in the Official Gazette of Industrial Property.
3. Where the owner of a protection title declares relinquishment of the industrial property right as stipulated in sub-clause (b) of clause 1 of this article, the State administrative body for industrial property rights shall decide to terminate the validity of such protection title from the date of receipt of the owner's declaration.
4. Organizations and individuals shall have the right to request the State administrative body for industrial property rights to terminate the validity of protection titles in cases specified in sub-clauses (c), (d), (dd), (e) and (g) of clause 1 of this article, provided that such organization or individual pays fees and charges. Based on the result of the examination of a request for termination of validity of a protection title and the opinions of the parties involved, the State administrative body for industrial property rights shall issue a decision on termination of validity of a protection title or notify refusal to terminate the validity of the protection title.
5. The provisions of clauses 1, 3 and 4 of this article shall also apply to the termination of validity of international registrations of marks.

Article 96 *Cancellation of effectiveness of protection titles*

1. A protection title shall be entirely invalidated in the following cases:
- (a) The applicant for registration has neither had nor been assigned the right to register the invention, industrial design, layout design or mark;



- (b) The industrial property object failed to satisfy the protection conditions at the time the protection title was granted.
2. A protection title shall be partly invalidated as to the part which failed to satisfy the protection conditions.
 3. Any organization or individual may request the State administrative body for industrial property rights to invalidate a protection title in the cases specified in clauses 1 and 2 of this article, provided that such applicant pays fees and charges. The statute of limitations for exercising the right to request invalidation of a protection title shall be the whole term of protection of the protection title. For marks, such statute of limitations shall be five (5) years from the grant date, except where the protection title was granted as a result of dishonesty of the applicant.
 4. Based on the result of the examination of a request for invalidation of a protection title and the opinions of the parties involved, the State administrative body for industrial property rights shall issue a decision on entire or partial invalidation of the protection title or shall notify refusal to invalidate.
 5. The provisions of clauses 1, 2, 3 and 4 of this article shall also apply to the invalidation of international registrations of marks.

Article 97 *Amendments to protection titles*

1. The owner of a protection title may request the State administrative body for industrial property rights to make amendments to the following information in such protection title, provided that the prescribed fees and charge are paid:
 - (a) Changes of, and corrections of errors to the name and address of the author or the protection title owner;
 - (b) Amendments to the description of particular characteristics, quality or geographical area bearing a geographical indication; amendments to the regulations on use of collective marks or the regulations on use of a certification mark.
2. At the request of the owner of a protection title, the State administrative body for industrial property rights must correct errors caused by its fault in such protection title, and in such case the protection title owner shall not be liable to pay fees and charges.
3. The owner of a protection title may request the State administrative body for industrial property rights to narrow the scope of industrial property rights. In such a case, the corresponding industrial property registration application shall be substantively re-examined and the requesting party shall pay a fee for substantive examination.

Article 98 *National Register of Industrial Property*

1. *The National Register of Industrial Property* means the document recording the establishment, change and transfer of industrial property rights to inventions, industrial designs, layout designs, marks and geographical indications pursuant to this Law.
2. Decisions on grant of protection titles, principal contents of protection titles and decisions on amendment to, termination of validity or cancellation of validity of protection titles, and decisions on registration of industrial property right transfer contracts shall all be recorded in the National Register of Industrial Property.



3. The National Register of Industrial Property shall be compiled and kept by the State administrative body for industrial property rights.

Article 99 *Publication of decisions relating to protection titles*

Decisions on the grant, termination of validity, cancellation of validity or amendment of protection titles for industrial property rights shall be published by the State administrative body for industrial property rights in the Official Gazette of Industrial Property within sixty (60) days as from the date of issuance of such decision.

SECTION 2

Applications for Registration of Industrial Property

Article 100 *General requirements applicable to applications for registration of industrial property*

1. An industrial property registration application shall contain the following documents:
 - (a) Declaration for registration, made on the stipulated form;
 - (b) Documents, samples and information identifying the industrial property object registered for protection as specified in articles 102 to 106 inclusive of this Law;
 - (c) Power of attorney, if the application is filed through a representative;
 - (d) Documents evidencing the registration right, if such right is acquired by the applicant from another person;
 - (dd) Documents evidencing the priority right, if such right is claimed;
 - (e) Receipt for payment of fees and charges.
2. Industrial property registration applications and source documents of transactions between an applicant and the State administrative body for industrial property rights shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the State administrative body for industrial property rights:
 - (a) Power of attorney;
 - (b) Documents evidencing the registration right;
 - (c) Documents evidencing the priority right;
 - (d) Other documents supporting the application.
3. Documents evidencing the priority right in an industrial property registration application shall include:
 - (a) A copy of the first application(s) certified by the receiving office;
 - (b) Deed of assignment of priority right if such right is acquired from another person.

Article 101 *Requirements on the uniformity of an application for registration of industrial property*



1. Each industrial property registration application shall request the grant of only one protection title for a single industrial property object, except for the cases specified in clauses 2, 3 and 4 of this article.
2. Each registration application may request the grant of one invention patent or one utility solution patent for a group of inventions that are technically linked to form a single common inventive idea.
3. Each registration application may request the grant of one industrial design patent for several industrial designs in the following cases:
 - (a) Industrial designs of a set of products consisting of numerous items expressing a single common inventive idea and used together or for a common purpose;
 - (b) An industrial design accompanied by one or more variants being variations of such industrial design which express a single common inventive idea and which are not significantly different from such industrial design.
4. Each registration application may request the grant of one certificate of registered mark for one mark to be used for one or more different goods or services.

Article 102 *Requirements on applications for registration of inventions*

1. Documents identifying an invention registered for protection in an application for invention registration shall include a description of the invention and an abstract of the invention. The invention description shall contain a descriptive section and the scope of protection of the invention.
2. The description of an invention must satisfy the following conditions:
 - (a) Fully and clearly disclose the nature of the invention to the extent that such invention may be realized by a person with average knowledge in the art;
 - (b) Briefly explain accompanying drawings, if it is required to further clarify the nature of the invention;
 - (c) Clarify the novelty, inventive step and susceptibility of industrial application of the invention.
3. The scope of protection of an invention shall be expressed in the form of a combination of technical specifications which are necessary and sufficient to identify the scope of the rights to such invention, compatible with the description of invention and drawings.
4. An abstract of an invention must disclose principal features of the nature of such invention.

Article 103 *Requirements on applications for registration of industrial designs*

1. Documents identifying an industrial design which needs to be protected in an application for registration of an industrial design shall include a description and a set of photos or drawings of such industrial design. The industrial design description shall consist of a descriptive section and a section on scope of protection of such industrial design.
2. The descriptive section of an industrial design must satisfy the following conditions:



- (a) Fully disclose all features expressing the nature of the industrial design and clearly identify features which are new, different from the least different known industrial design, and consistent with the set of photos or drawings;
 - (b) Where the application for registration of the industrial design consists of variants, the descriptive section must fully show these variants and clearly identify distinctions between the principal variant and other variants;
 - (c) Where the industrial design stated in the registration application is that of a set of products, the descriptive section must fully show features of each product of the set.
3. The section on scope of protection of an industrial design must clearly define features which need to be protected, including features which are new and different from similar known industrial designs.
4. The set of photos and drawings must fully define the features of the industrial design.

Article 104 *Requirements on applications for registration of layout designs*

Documents, samples and information identifying a layout design which needs to be registered for protection in an application for registration of a layout design shall include:

1. Drawings and photos of the layout-design.
2. Information on the functions and structure of semi-conducting closed circuits produced under the layout design.
3. Samples of semi-conducting closed circuits produced under the layout design, if such layout design has been commercially exploited.

Article 105 *Requirements on applications for registration of marks*

1. Documents, samples and information identifying a mark which needs to be registered for protection in an application for registration of a mark shall include:
 - (a) A sample of the mark and a list of goods or services bearing the mark;
 - (b) Regulations on use of collective marks or regulations on use of certification marks.
2. The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in a foreign language, such words or phrases must be translated into Vietnamese.
3. Goods or services listed in an application for registration of a mark must be classified into appropriate groups in accordance with the Classification List under the *Nice Agreement on International Classification of Goods and Services* for the purpose of mark registration, and published by the State administrative body for industrial property rights.
4. The regulations on use of collective marks shall contain the following principal contents:
 - (a) Name, address, grounds of establishment and operation of the collective organization being the owner of the mark;



- (b) Criteria for becoming a member of the collective organization;
 - (c) List of organizations and individuals permitted to use the mark;
 - (d) Conditions for use of the mark;
 - (dd) Measures for dealing with breaches of regulations on use of the mark.
5. The regulations on use of certification marks shall contain the following principal contents:
- (a) The organization or individual being the mark owner;
 - (b) Conditions for using the mark;
 - (c) Characteristics of goods or services certified by the mark;
 - (d) Methods of evaluating characteristics of goods or services and methods of controlling the use of the mark;
 - (dd) Expenses to be paid by the mark user for certification and protection of the mark, if any.

Article 106 *Requirements on applications for registration of geographical indications*

1. Documents, samples and information identifying a geographical indication which needs to be registered for protection in an application for registration of a geographical indication shall include:
- (a) The name or sign being the geographical indication;
 - (b) The product bearing the geographical indication;
 - (c) Description of peculiar characteristics and quality, or reputation of the product bearing the geographical indication and particular elements of natural conditions decisive to the peculiar characteristics and quality, or reputation of the product (hereinafter referred to as the *description of peculiar characteristics*);
 - (d) Map of the geographical area bearing the geographical indication;
 - (dd) Documents evidencing that the geographical indication is under protection in the country of origin in the case of a foreign geographical origin.
2. The description of peculiar characteristics must contain the following principal contents:
- (a) Description of the relevant product including raw materials, and physical, chemical, microbiological and perceptible properties of the product;
 - (b) Method of identification of the geographical area bearing the geographical indication;
 - (c) Evidence proving that the product originates from such geographical area within the meaning stipulated in article 79 of this Law;
 - (d) Description of local and stable methods of production and processing;



- (dd) Information on relationship between the peculiar characteristics and quality, or reputation of the product and the geographical conditions as stipulated in article 79 of this Law;
- (e) Information on the mechanism of self-control of the peculiar characteristics or quality of the product.

Article 107 *Authorized representation in procedures related to industrial property rights*

1. Authorization for carrying out procedures related to the establishment, maintenance, extension, amendment, termination and invalidation of protection titles must be made in writing in the form of a power of attorney.
2. A power of attorney must contain the following principal contents:
 - (a) Full name and address of the principal and of the attorney;
 - (b) Scope of authorization;
 - (c) Valid term of authorization;
 - (d) Date of making the power of attorney;
 - (dd) Signature and seal (if any) of the principal.
3. A power of attorney without any valid term shall be considered valid indefinitely, and validity shall be terminated only when the principal declares termination of validity.

SECTION 3

**Procedures for Processing Applications for Registration of Industrial Property
and for Granting Protection Titles**

Article 108 *Receipt of applications for registration of industrial property, and filing dates*

1. An application for registration of industrial property shall only be received by the competent State administrative body for industrial property rights if the application consists of at least the following documents and information:
 - (a) A declaration for registration of an invention, industrial design, layout design, mark or geographical indication, which includes sufficient information to identify the applicant and in the case of a mark a sample of the mark and a list of goods or services bearing the mark;
 - (b) Description, including the scope of protection, in the case of an application for registration of an invention; a set of photos and drawings and a description in the case of an application for registration of an industrial design; and a description of peculiar characteristics of a product bearing a geographical indication, in the case of an application for registration of a geographical indication;
 - (c) Receipt for payment of filing fee.
2. The filing date shall be the date on which the application is received by the competent State administrative body for industrial property rights, or the international filing date in the case of an application filed pursuant to an international treaty.



Article 109 *Formal examination of applications for registration of industrial property*

1. Applications for registration of industrial property shall be subject to formal examination for evaluation of their validity.
2. An application for registration of industrial property shall be considered invalid in the following cases:
 - (a) It does not fulfil the formal requirements;
 - (b) The subject matter stated in the application is ineligible for protection;
 - (c) The applicant does not have the registration right, including where the registration right belongs to more than one organization or individual but one or more of them do not agree to the filing;
 - (d) The application is filed in contravention of regulations on the filing method stipulated in article 89 of this Law;
 - (dd) The applicant fails to pay fees and charges.
3. For applications for registration of industrial property falling into a case stipulated in clause 2 of this article, the State administrative body for industrial property rights shall carry out the following procedures:
 - (a) Issue a notice of intended refusal to accept the invalid application, clearly stating reasons and setting a time-limit for the applicant to correct errors or to object to such intended refusal;
 - (b) Issue a notice of refusal to accept the invalid application if the applicant fails to correct errors, improperly corrects errors or fails to make a justifiable objection to such intended refusal stipulated in sub-clause (a) of this clause;
 - (c) Issue a notice of refusal to grant a certificate of registered design of semi-conducting closed circuits in case of a closed circuit registration application;
 - (d) Carry out procedures specified in clause 4 of this article if the applicant properly corrects errors or makes a justifiable objection to the intended refusal to accept the invalid application stipulated in sub-clause (a) of this clause.
4. For industrial property registration applications not falling into a case stipulated in clause 2 of this article, or in a case stipulated in sub-clause (d) of clause 3 of this article, the State administrative body for industrial property rights shall issue a notice of acceptance of the valid application or carry out procedures for granting a protection title and recording it in the National Register of Industrial Property as stipulated for in article 118 of this Law, applicable to layout design registration applications.
5. Mark registration applications rejected according to the provisions of clause 3 of this article shall be deemed not to have been filed, except where they serve as grounds for claims for priority right.

Article 110 *Publication of applications for registration of industrial property*



1. Applications for registration of industrial property which have been accepted as being valid by the State administrative body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this article.
2. Applications for registration of inventions shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.
3. Applications for registration of industrial designs, marks or geographical indications shall be published within two months as from the date such application is accepted as being valid.
4. Applications for registration of layout designs shall be published by mode of permitting direct access at the competent State administrative body for industrial property rights, provided that reproduction shall not be permitted. Access to confidential information in an application shall only be permitted to competent authorities and parties involved in the process of carrying out procedures for invalidating protection titles or the process of carrying out procedures for dealing with infringement of rights.

Principal information on an application for registration of a layout design and the protection title for a layout design shall be published within two months as from the date of grant of such protection title.

Article 111 *Confidentiality of applications for registration of inventions and industrial designs prior to publication thereof*

1. Before applications for registration of inventions and industrial designs are published in the Official Gazette of Industrial Property, the State administrative body for industrial property rights must keep information therein confidential.
2. State employees of the State administrative body for industrial property rights who disclose information in applications for registration of inventions and industrial designs shall be disciplined; if the information disclosed causes loss and damage to applicants, such employees must pay compensation therefor in accordance with law.

Article 112 *Third party opinions on the grant of protection titles*

As from the date an application for registration of industrial property is published in the Official Gazette of Industrial Property up until prior to the date of issuance of a decision on grant of a protection title, any third party shall have the right to express an opinion to the competent State administrative body for industrial property rights on the grant or refusal to grant a protection title for such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

Article 113 *Request for substantive examination of applications for registration of inventions*

1. Within forty two (42) months after the filing date or the priority date, as applicable, an applicant or any third party may request the competent State administrative body for industrial property rights to substantively examine an application [for registration of an invention], provided that the substantive examination fee is paid.
2. The time-limit for making a request for substantive examination of an application for registration of an invention involving a request for a utility solution patent shall be thirty six (36) months from the filing date or the priority date, as applicable.
3. Where no request for substantive examination is filed within the time-limit specified in clauses 1 and 2 of this article, the application for registration of the invention shall be deemed to have been withdrawn at the expiry of such time-limit.



Article 114 *Substantive examination of applications for registration of industrial property*

1. The following applications for registration of industrial property shall be substantively examined for evaluation of the eligibility for grant of protection titles for subject matter stated in such applications under protection conditions and for determination of the respective scope of protection:
 - (a) Applications for registration of inventions which have already been accepted as being valid and involve requests for substantive examination filed according to regulations;
 - (b) Applications for registration of industrial designs, marks and geographical indications which have been accepted as being valid.
2. Applications for registration of layout designs shall not be substantively examined.

Article 115 *Amendment, supplementation, division and conversion of applications for registration of industrial property*

1. An applicant shall have the following rights before the competent State administrative body for industrial property rights notifies a refusal or decides to grant a protection title:
 - (a) To amend or supplement the application;
 - (b) To divide the application;
 - (c) To request the recording of changes in name or address of the applicant;
 - (d) To request the recording of change of the applicant as a result of application transfer under a contract, bequest or inheritance, or under a decision of a competent agency;
 - (dd) To convert an application for registration of an invention involving a request for an invention patent into an application for registration of an invention involving a request for a utility solution patent, and vice versa.
2. The applicants for completion of the procedures stipulated in clause 1 of this article must pay fees and charges.
3. Any amendment or supplementation of an application for registration of industrial property must not expand the scope of the subject matter already disclosed or stated in such application, and must not change the nature of the subject matter subject to registration stated in the application and must ensure the uniformity of the application.
4. In a case of division of an application, the filing date of the divided application shall be deemed to be the filing date of the original application.

Article 116 *Withdrawal of applications for registration of industrial property*

1. Before the competent State administrative body for industrial property rights decides or refuses to grant a protection title, the applicant shall have the right to make a written declaration on the withdrawal of the application for registration of industrial property in his or her own name or through an industrial property representation service organization, provided that a power of attorney clearly states authorization for withdrawal of the application.



2. As from the time an applicant declares withdrawal of the application, all further procedures related to such application shall cease; fees and charges already paid in relation to the procedures which have not yet been commenced shall be refunded to the applicant at his or her request.
3. All applications for registration of industrial designs which have been withdrawn or are deemed to have been withdrawn before their publication and all applications for registration of marks which have been withdrawn shall be deemed not to have been filed, except where they serve as grounds for claims for priority right.

Article 117 *Refusal to grant protection titles*

1. The grant of a protection title as the result of an application for registration of an invention, industrial design, mark or geographical indication shall be refused in the following cases:
 - (a) There are grounds to affirm that the subject matter stated in the application does not fully satisfy the conditions for protection;
 - (b) The application satisfies the conditions for the grant of a protection title but does not have the earliest filing date or priority date as in the case stipulated in clause 1 of article 90 of this Law;
 - (c) The application falls into a case stipulated in clause 2 of article 90 of this Law but fails to have the consensus of all applicants.
2. The grant of a protection title for an application for registration of a layout design which does not fulfil the formal requirements stipulated in article 109 of this Law shall be refused.
3. Where an application for registration of industrial property falls into the cases stipulated in clauses 1 and 2 of this article, the competent State administrative body for industrial property rights shall carry out the following procedures:
 - (a) Notify an intended refusal to grant a protection title, clearly stating the reasons therefor and setting a time-limit for the applicant to make an objection to such intended refusal;
 - (b) Notify the refusal to grant a protection title if the applicant makes no objection or makes unjustifiable objection to such intended refusal stipulated in sub-clause (a) of this clause;
 - (c) Grant a protection title and record it in the National Register of Industrial Property according to the provisions of article 118 of this Law if the applicant has made a justifiable objection to the intended refusal stipulated in sub-clause (a) of this clause.
4. Where an objection is made to the intended grant of a protection title, the relevant application for registration of industrial property shall be re-examined with regard to the matters about which the objection is made.

Article 118 *Grant of protection titles, entry into the register*

Where an application for registration of industrial property does not fall into the cases of refusal to grant protection titles stipulated in clauses 1, 2 and 3(b) of article 117 of this Law and the applicant has paid the fee, the State administrative body for industrial property rights shall decide to grant a protection title and enter it in the National Register of Industrial Property.

Article 119 *Time-limit for processing applications for registration of industrial property*



1. An application for registration of industrial property shall have its form examined within one month from the filing date.
2. An application for registration of industrial property shall be substantively examined within the following time-limits:
 - (a) For an invention, twelve (12) months from the date of its publication if a request for substantive examination is filed before the date of publication of the application, or from the date of receipt of a request for substantive examination if such request is filed after the date of publication of the application;
 - (b) For an industrial design, a mark or a geographical indication, six (6) months from the date of publication of the application.
3. The time-limit for re-examination of an application for registration of industrial property shall be equal to two-thirds of the time-limit for the initial examination, and may, in complicated cases, be extended but must not exceed the time-limit for the initial examination.
4. The duration for amendment or supplementation of applications shall not be included in the time-limits specified in clauses 1, 2 and 3 of this article.

SECTION 4

International Applications and Processing of International Applications

Article 120 *International applications and processing of international applications*

1. Applications for registration of industrial property filed pursuant to a treaty of which the Socialist Republic of Vietnam is a member shall be collectively referred to as *international applications*.
2. International applications and processing thereof shall comply with the relevant treaties.
3. The Government shall guide the implementation of provisions in relevant treaties on international applications, and the order and procedure for processing thereof in compliance with the principles stipulated in this Chapter.

CHAPTER IX

Owners of Industrial Property Rights, Contents of Industrial Property Rights, and Limitations on Industrial Property Rights

SECTION 1

Owners of Industrial Property Rights, Contents of Industrial Property Rights

Article 121 *Owners of industrial property objects*

1. *The owner of an invention, industrial design or layout design* means an organization or individual who is granted a protection title for the respective industrial property object by the competent body.



Owner of a mark means an organization or individual who is granted a protection title for such mark by the competent body or who has an internationally registered mark recognized by the competent body or who has a well known mark.

2. *Owner of a trade name* means an organization or individual who lawfully uses such trade name in business activities.
3. *Owner of a trade secret* means an organization or individual who has lawfully acquired such trade secret and kept it secret. A trade secret acquired by an employee or a performer of an assigned task during the performance of the hired job or assigned task shall be owned by the employer or the task assignor, unless otherwise agreed by the parties.
4. The State is the owner of geographical indications of Vietnam.

The State shall grant the right to use geographical indications to organizations or individuals who manufacture products bearing such geographical indications in relevant localities and put such products on the market. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted the right to use geographical indications.

Article 122 *Authors of inventions, industrial designs and layout designs and their rights*

1. *The author of an invention, industrial design or layout design* means the person who has personally created such industrial property object. Where two or more persons have jointly created an industrial property object, they shall be co-authors of it.
2. Moral rights of authors of inventions, industrial designs and layout designs shall include the following rights:
 - (a) To be named as authors in invention patents, utility solution patents, industrial design patents or certificates of registered design of semi-conducting closed circuits;
 - (b) To be acknowledged as authors in documents in which inventions, industrial designs or layout designs are published or introduced.
3. Economic rights of authors of inventions, industrial designs and layout designs are the rights to receive remuneration as stipulated in article 135 of this Law.

Article 123 *Rights of owners of industrial property objects*

1. Owners of industrial property objects shall have the following economic rights:
 - (a) To use or authorize others to use industrial property objects according to the provisions of article 124 and Chapter X of this Law;
 - (b) To prevent others from using industrial property objects according to the provisions of article 125 of this Law;
 - (c) To dispose of industrial property objects according to the provisions of Chapter X of this Law.
2. Organizations and individuals who are granted by the State the right to use or the right to manage geographical indications according to the provisions of clause 4 of article 121 of this Law shall have the following rights:



- (a) Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of clause 1(a) of this article;
- (b) Organizations and individuals who are granted the right to use or organizations which are granted the right to manage geographical indications may prevent other persons from using such geographical indications according to the provisions of clause 1(b) of this article.

Article 124 *Use of industrial property objects*

1. *Use of an invention* means the performance of the following acts:
 - (a) Manufacturing the protected product;
 - (b) Applying the protected process;
 - (c) Exploiting utilities of the protected product or the product manufactured under the protected process;
 - (d) Circulating, advertising, offering or stocking for circulation the products stipulated in sub-clause (c) of this clause;
 - (dd) Importing the products stipulated in sub-clause (c) of this clause.
2. *Use of an industrial design* means the performance of the following acts:
 - (a) Manufacturing products with an appearance embodying the protected industrial design;
 - (b) Circulating, advertising, offering or stocking for circulation products stipulated in sub-clause (c) of this clause;
 - (c) Importing products stipulated in sub-clause (c) of this clause.
3. *Use of a layout design* means the performance of the following acts:
 - (a) Reproducing the layout design; manufacturing semi-conducting closed circuits under the protected layout design;
 - (b) Selling, leasing, advertising, offering or stocking copies of the protected layout design, semi-conducting closed circuits manufactured under the protected layout design or articles containing such semi-conducting closed circuits;
 - (c) Importing copies of the protected layout design, semi-conducting closed circuits manufactured under the protected layout-design or articles containing such semi-conducting closed circuits.
4. *Use of a trade secret* means the performance of the following acts:
 - (a) Applying the trade secret to the manufacture of products, provision of services or trade in goods;
 - (b) Selling, advertising for sale, stocking for sale or importing products manufactured with the application of the trade secret.



5. *Use of a mark* means the performance of the following acts:
 - (a) Affixing the protected mark on goods, goods packages, business facilities, means of service provision or transaction documents in business activities;
 - (b) Circulating, offering, advertising for sale or stocking for sale goods bearing the protected mark;
 - (c) Importing goods or services bearing the protected mark.
6. *Use of a trade name* means the performance of acts for commercial purposes by using the trade name to name oneself in business activities, or expressing the trade name in or on transaction documents, signboards, products, goods, goods packages and means of service provision or advertisement.
7. *Use of a geographical indication* means the performance of the following acts:
 - (a) Affixing the protected geographical indication in or on goods or goods packages, business facilities, and transaction documents in business activities;
 - (b) Circulating, offering, advertising for sale or stocking for sale goods bearing the protected geographical indication;
 - (c) Importing goods bearing the protected geographical indication.

Article 125 *Right to prevent others from using industrial property objects*

1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall have the right to prevent others from using such industrial property objects unless such use falls into the cases stipulated in clauses 2 and 3 of this article.
2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:
 - (a) Using inventions, industrial designs or layout designs in service of their personal needs or for non-commercial purposes, or for purposes of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licences for production, importation or circulation of products;
 - (b) Circulating, importing, exploiting utilities of products which were lawfully put on the market including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees;
 - (c) Using inventions, industrial designs or layout designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the territory of Vietnam;
 - (d) Using inventions or industrial designs by persons with the prior use right according to the provisions of article 134 of this Law;



- (dd) Using inventions by persons authorized by competent State bodies according to the provisions of articles 145 and 146 of this Law;
 - (e) Using layout designs without knowing or having the obligation to know that such layout designs are under protection;
 - (g) Using marks identical with or similar to protected geographical indications where such marks have acquired protection in an honest manner before the date of filing the application for registration of such geographical indication;
 - (h) Using in an honest manner people's names, descriptive marks of type, quantity, quality, utility, value, geographical origin and other properties of goods or services.
3. Owners of trade secrets shall not have the right to prevent others from performing the following acts:
- (a) Disclosing or using trade secrets acquired without knowing or having the obligation to know that they were unlawfully acquired by others;
 - (b) Disclosing secret data in order to protect the public according to the provisions of clause 1 of article 128 of this Law;
 - (c) Using secret data stipulated in article 128 of this Law not for commercial purposes;
 - (d) Disclosing or using trade secrets obtained independently;
 - (dd) Disclosing or using trade secrets obtained by analyzing or evaluating lawfully distributed products, unless otherwise agreed upon by analyzers or evaluators and owners of such trade secrets or sellers of such products.

Article 126 *Acts of infringement of rights to inventions, industrial designs and layout designs*

The following acts shall be regarded as infringements of rights of owners of inventions, industrial designs and layout designs:

- 1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout designs or any original part thereof within the valid term of a protection title without permission from the owners.
- 2. Using inventions, industrial designs and layout designs without paying compensation according to the provisions on provisional rights in article 131 of this Law.

Article 127 *Acts of infringement of the right to trade secrets*

- 1. The following acts shall be deemed infringements of the right to trade secrets:
 - (a) Accessing or acquiring information pertaining to a trade secret by taking acts against secrecy-keeping measures applied by lawful controllers of such trade secret;
 - (b) Disclosing or using information pertaining to a trade secret without the permission of the owner of such trade secret;



- (c) Breaching secrecy-keeping contracts or deceiving, inducing, buying off, forcing, seducing or abusing the trust of persons in charge of secrecy-keeping in order to access, acquire or disclose a trade secret;
 - (d) Accessing or acquiring information pertaining to the trade secret of an applicant for a licence for trading in or circulating products by taking acts against secrecy-keeping measures applied by competent bodies;
 - (dd) Using or disclosing trade secrets, while knowing or having the obligation to know that they have been acquired by others engaged in one of the acts stipulated in sub-clauses (a), (b), (c) or (d) of this clause;
 - (e) Failing to perform the secrecy-keeping obligation stipulated in article 128 of this Law.
2. Lawful controllers of trade secrets defined in clause 1 of this Article include owners of trade secrets, their lawful licensees and managers of trade secrets.

Article 128 *Obligation to maintain secrecy of test data*

1. Where the law requires applicants for licences for trading in or circulating pharmaceuticals or agro-chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.
2. From the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a five year period as from the date the applicant is granted a licence, such body must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, except for the cases stipulated in clause 3(d) of article 125 of this Law.

Article 129 *Acts of infringement of rights to marks, trade names and geographical indications*

1. The following acts, if performed without the permission of mark owners, shall be deemed to be infringements of the right to a mark:
 - (a) Using signs identical with protected marks for goods or services identical with goods or services on the list registered together with such mark;
 - (b) Using signs identical with protected marks for goods or services similar or related to those goods or services on the list registered together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;
 - (c) Using signs similar to protected marks for goods or services identical with, similar to or related to goods or services on the list registered together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;
 - (d) Using signs identical with, or similar to, well known marks, or signs in the form of translations or transcriptions of well known marks for any goods or services, including those not identical with, dissimilar or unrelated to goods or services on the lists of those bearing well known marks, if such use is likely to cause confusion as to the origin of the goods or services or



misleading impressions as to the relationship between users of such signs and well known mark owners.

2. All acts of using commercial indications identical with, or similar to, trade names of others which were used earlier for the same or similar type of goods or services, which cause confusion as to business entities, establishments or activities under such trade names shall be deemed to be infringements of the right to the trade name.
3. The following acts shall be deemed to be infringements of the right to protected geographical indications:
 - (a) Using protected geographical indications for products which do not satisfy the criteria of peculiar characteristics and quality of products bearing geographical indications, although such products originate from geographical areas bearing such geographical indication;
 - (b) Using protected geographical indications for products similar to products bearing geographical indications for the purpose of taking advantage of their reputation and popularity;
 - (c) Using any sign identical with, or similar to, a protected geographical indication for products not originating from geographical areas bearing such geographical indication, and therefore misleading consumers into believing such products originate from such geographical areas;
 - (d) Using protected geographical indications of wines or spirits for wines or spirits not originating from geographical areas bearing such geographical indication, even where the true origin of goods is indicated or geographical indications are used in the form of translations or transcriptions, or accompanied by such words as "category," "model," "type," "imitation" or the like.

Article 130 *Acts of unfair competition*

1. The following acts shall be deemed to be acts of unfair competition:
 - (a) Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services;
 - (b) Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;
 - (c) Using marks protected in a country which is a contracting party to a treaty of which the Socialist Republic of Vietnam is a member and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified;
 - (d) Registering or possessing the right to use or using domain names identical with, or confusingly similar to, protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing such domain name, benefiting from or prejudicing the reputation and popularity of the respective mark, trade name or geographical indication.



2. Commercial indications stipulated in clause 1 of this article mean signs and information serving as guidelines to trading of goods or services including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.
3. Acts of using commercial indications stipulated in clause 1 of this article include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; and selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.

Article 131 *Provisional rights to inventions, industrial designs and layout designs*

1. Where an applicant for registration of an invention or industrial design knows that such invention or industrial design is being used by another person for commercial purposes without prior use right, the applicant may notify in writing the user of the filing of the latter's application, clearly specifying the filing date and the date of publication of the application in the Official Gazette of Industrial Property so that the user may either terminate or continue such use.
2. For a layout design which has, before the grant date of the certificate of registered design of semi-conducting closed circuits, been commercially exploited by the person with the registration right or his or her licensee, if such person knows that such layout design is being used by another person for commercial purposes, then he or she may notify in writing the user of his or her registration right so that the user may either terminate or continue such use.
3. Where the person notified of contents stipulated in clauses 1 and 2 of this article continues using such invention, industrial design or layout design, then as soon as an invention patent, utility solution patent, industrial design patent or certificate of registered design of semi-conducting closed circuits is granted, the owner of the object shall have the right to request the user to pay compensation equivalent to the price for licensing of such invention, industrial design or layout design within the corresponding scope and duration of use.

SECTION 2

Limitations on Industrial Property Rights

Article 132 *Factors limiting industrial property rights*

Industrial property rights may be limited pursuant to this Law by the following factors:

1. Right of prior users to inventions or industrial designs.
2. Obligations of owners, including:
 - (a) To pay remuneration to the authors of inventions, industrial designs or layout designs;
 - (b) To use inventions or marks.
3. Licensing of inventions pursuant to decisions of competent State bodies.

Article 133 *Right to use inventions on behalf of the State*

1. Ministries and ministerial equivalent bodies shall have the right, on behalf of the State, to use or permit other organizations or individuals to use inventions in domains under their respective management for public and non-commercial purposes, national defence and security, disease



prevention, and treatment and nutrition of the people, and to meet other urgent social needs without having to obtain permission of invention owners or their licensees under exclusive contracts (hereinafter referred to as *holders of the exclusive right to use inventions*) in accordance with articles 145 and 146 of this Law.

2. The use of inventions pursuant to clause 1 of this article shall be limited within the scope of and under the conditions for licensing provided for in clause 1 of article 146 of this Law, except where such inventions are created by using material and technical facilities and funds from the State Budget.

Article 134 *Right of prior use of inventions and industrial designs*

1. Where a person has, before the publication date of an application for registration of an invention or industrial design, used or prepared necessary conditions for use of an invention or industrial design identical with the protected invention or industrial design stated in such application for registration, but created independently (hereinafter referred to as the *prior use right holder*), then after a protection title is granted, such person shall be entitled to continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission or paying compensation to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs shall not be deemed an infringement of the right of the owner of the invention or industrial design.
2. Prior use right holders to inventions or industrial designs must not assign such right to others, except where such right is assigned together with the transfer of a business or production establishment which has used or has prepared to use the invention or industrial design. Prior use right holders must not expand the use scope and volume unless it is so permitted by the owner of the invention or industrial design.

Article 135 *Obligation to pay remuneration to authors of inventions, industrial designs and layout designs*

1. Owners of inventions, industrial designs and layout designs shall be obliged to pay remuneration to the authors of such inventions, industrial designs and layout designs in accordance with the provisions of clauses 2 and 3 of this article, unless otherwise agreed upon by the parties.
2. The minimum level of remuneration payable by an owner to an author shall be regulated as follows:
 - (a) Ten (10) per cent of the profit gained by the owner from the use of the invention, industrial design or layout design;
 - (b) Fifteen (15) per cent of the total amount received by the owner in each payment for licensing of the invention, industrial design or layout design.
3. Where an invention, industrial design or layout design is jointly created by more than one author, the remuneration level provided for in clause 2 of this article shall be applicable to all co-authors. The co-authors shall agree between themselves on the division of the remuneration paid by the owner.
4. The obligation to pay remuneration to authors of inventions, industrial designs and layout designs shall exist throughout the term of protection of such invention, industrial design or layout design.

Article 136 *Obligation to use inventions and marks*

1. Owners of inventions shall be obliged to manufacture protected products or apply protected processes to satisfy the requirements of national defence and security, disease prevention, and



treatment and nutrition of the people or to meet other social urgent needs. When the needs stipulated in this clause arise but an invention owner fails to perform such obligation, the competent State body may license such invention to others without permission from the invention owner in accordance with the provisions of articles 145 and 146 of this Law.

2. Owners of marks shall be obliged to use such marks continuously. Where a mark has not been used for five consecutive years or more, the ownership right to such mark shall be invalidated in accordance with the provisions of article 95 of this Law.

Article 137 *Obligation to authorize the use of principal inventions for the purpose of using dependent inventions*

1. A *dependent invention* means an invention created based on another invention (hereinafter referred to as the *principal invention*) and may only be used on condition that the principal invention is also used.
2. Where the owner of a dependent invention can prove that his or her invention makes an important technical advance as compared with the principal invention and has great economic significance, he or she may request the owner of the principal invention to license such principal invention at a reasonably commercial price and conditions.

Where the owner of a principal invention fails to satisfy the request of the owner of a dependent invention without justifiable reason, the State body concerned may license such invention to the owner of the dependent invention without permission from the owner of the principal invention in accordance with the provisions of articles 145 and 146 of this Law.

CHAPTER X

Transfer of Industrial Property Rights

SECTION 1

Assignment of Industrial Property Rights

Article 138 *General provisions on assignment of industrial property rights*

1. *Assignment of an industrial property right* means the transfer of ownership right by the owner of such industrial property right to another organization or individual.
2. An assignment of an industrial property right must be established in the form of a written contract (hereinafter referred to as an *industrial property right assignment contract*).

Article 139 *Restrictions on assignment of industrial property rights*

1. Industrial property right owners may only assign their rights within the scope of protection.
2. Rights to geographical indications shall not be assignable.
3. Rights to trade names may only be assigned together with the transfer of the entire business establishment and business activities under such trade name.



4. The assignment of the rights to marks must not cause confusion as to properties or origins of goods or services bearing such marks.
5. Rights to marks may only be assigned to organizations or individuals who satisfy conditions for persons having the right to register such marks.

Article 140 *Contents of industrial property right assignment contracts*

An industrial property right assignment contract must contain the following principal contents:

1. Full names and addresses of the assignor and of the assignee.
2. Grounds for the assignment.
3. Assignment price.
4. Rights and obligations of the assignor and the assignee.

SECTION 2

Licensing of Industrial Property Rights

Article 141 *General provisions on licensing of industrial property rights*

1. *Licensing of an industrial property object* means permission by the owner of such industrial property object for another organization or individual to use the industrial property object within the scope of the owner's right.
2. Licensing of industrial property objects must be established in the form of a written contract (hereinafter referred to as *industrial property object licence contract*).

Article 142 *Restrictions on licensing of industrial property objects*

1. The right to use geographical indications or trade names shall not be licensable.
2. The right to use collective marks must not be licensed to organizations or individuals other than members of the owners of such collective marks.
3. The licensee must not enter into a sub-licence contract with a third party, unless it is so permitted by the licensor.
4. Mark licensees shall be obliged to indicate on goods and goods packages that such goods have been manufactured under mark licence contracts.
5. Invention licensees under exclusive contracts shall be obliged to use such inventions in the same manner as the invention owners according to the provisions of clause 1 of article 136 of this Law.

Article 143 *Types of industrial property object licence contracts*

Industrial property object licence contracts shall be of the following types:

1. *Exclusive contract* means a contract under which, within the licensing scope and term, the licensee shall have the exclusive right to use the licensed industrial property object while the licensor may



neither enter into any industrial property object licence contract with any third party nor, without permission from the licensee, use such industrial property object.

2. *Non-exclusive contract* means a contract under which, within the licensing scope and term, the licensor shall still have the right to use the industrial property object and to enter into a non-exclusive industrial property object licence contract with others.
3. *Industrial property object sub-licence contract* means a contract under which the licensor is a licensee of the right to use such industrial property object pursuant to another contract.

Article 144 *Contents of industrial property object licence contracts*

1. An industrial property object licence contract must contain the following principal contents:
 - (a) Full names and addresses of the licensor and of the licensee;
 - (b) Grounds for licensing;
 - (c) Contract type;
 - (d) Licensing scope including limitations on use right and territorial limitations;
 - (dd) Contract term;
 - (e) Licensing price;
 - (g) Rights and obligations of the licensor and of the licensee.
2. An industrial property object licence contract must not have provisions which unreasonably restrict the right of the licensee, and in particular the following provisions which do not derive from the rights of the licensor:
 - (a) Prohibiting the licensee from improving the industrial property object other than marks; compelling the licensee to transfer free of charge to the licensor improvements of the industrial property object made by the licensee or the right of industrial property registration or industrial property rights to such improvements;
 - (b) Directly or indirectly restricting the licensee from exporting goods produced or services provided under the industrial property object licence contract to the territories where the licensor neither holds the respective industrial property right nor has the exclusive right to import such goods;
 - (c) Compelling the licensee to buy all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the licensor not for the purpose of ensuring the quality of goods produced or services provided by the licensee;
 - (d) Prohibiting the licensee from complaining about or initiating lawsuits with regard to the validity of the industrial property rights or the licensor's right to license.
3. Any clauses in a contract falling into the cases stipulated in clause 2 of this article shall be automatically invalid.

SECTION 3



Compulsory Licensing of Inventions

Article 145 *Grounds for compulsory licensing of inventions*

1. In the following cases, the right to use an invention may be licensed to another organization or individual pursuant to a decision of the competent State body defined in clause 1 of article 147 of this Law without permission from the holder of the exclusive right to use such invention:
 - (a) Where the use of such invention is for public and non-commercial purposes or in service of national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society;
 - (b) Where the holder of the exclusive right to use such invention fails to fulfil the obligations to use such invention stipulated in clause 1 of article 136 and clause 5 of article 142 of this Law upon the expiration of four years as from the date of filing the application for registration of the invention, or the expiration of three years as from the date of granting the invention patent;
 - (c) Where a person who wishes to use the invention fails to reach an agreement with the holder of the exclusive right to use such invention or on entry into an invention licence contract in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions;
 - (d) Where the holder of the exclusive right to use such invention is deemed to have performed anti-competitive practices prohibited by the law on competition.
2. The holder of the exclusive right to use an invention may request termination of the use right when the grounds for licensing stipulated in clause 1 of this article no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the licensee of the invention.

Article 146 *Conditions limiting the right to use inventions compulsorily licensed pursuant to a decision*

1. The right to use an invention licensed pursuant to a decision of a competent State body must comply with the following conditions:
 - (a) Such licensed use right is non-exclusive;
 - (b) Such licensed use right is only limited to a scope and duration sufficient to achieve the licensing objectives, and largely for the domestic market, except for the case stipulated in clause 1(d) of article 145 of this Law. For an invention in semi-conducting technology, licensing shall be only for public and non-commercial purposes or for dealing with anti-competitive practices prohibited by the law on competition;
 - (c) The licensee must neither assign nor sub-license such right to others, except where the assignment is effected together with the transfer of the licensee's establishment;
 - (d) The licensee must pay the holder of the exclusive right to use the invention satisfactory compensation depending on the economic value of such use right in each specific case, and compliant with the compensation framework stipulated by the Government.
2. Apart from the conditions stipulated in clause 1 of this article, the right to use an invention licensed in any of the cases stipulated in clause 2 of article 137 of this Law must also satisfy the following conditions:



- (a) The holder of the exclusive right to use the principal invention shall also be licensed to use dependent inventions on reasonable terms;
- (b) The licensee of the right to use the principal invention must not assign such right, except where the assignment is effected together with all rights to the dependent inventions.

Article 147 *Authority and procedures for compulsorily licensing of an invention pursuant to a decision*

1. The Ministry of Science and Technology shall issue decisions on licensing of inventions based on a consideration of requests for licensing in the cases stipulated in sub-clauses (b), (c) and (d) of article 145.1 of this Law.

Ministries and ministerial equivalent bodies shall, after consulting the opinion of the Ministry of Science and Technology, issue decisions on licensing of inventions in domains under their respective management in the case stipulated in sub-clause (a) of article 145.1 of this Law.

2. Decisions on licensing of inventions must set out appropriate use scope and conditions according to the provisions of article 146 of this Law.
3. The State body competent to decide on licensing of an invention must promptly notify its decision to the holder of the exclusive right to use such invention.
4. A decision on licensing of an invention or on refusal to license an invention may be subject to a complaint or lawsuit in accordance with law.
5. The Government shall provide specific regulations on licensing of inventions pursuant to this article.

SECTION 4

Registration of Contracts for Transfer of Industrial Property Rights

Article 148 *Validity of contracts for transfer of industrial property rights*

1. For the industrial property rights established on the basis of registration according to the provisions of clause 3(a) of article 6 of this Law, an industrial property right assignment contract shall be valid upon its registration with the State administrative body for industrial property rights.
2. For the industrial property rights established on the basis of registration according to the provisions of clause 3(a) of article 6 of this Law, an industrial property object licence contract shall be valid as agreed upon by the parties involved but shall be legally effective as against a third party upon registration with the State administrative body for industrial property rights.
3. Validity of an industrial property object licence contract shall be automatically terminated upon the termination of the licensor's industrial property rights.

Article 149 *Application file for registration of a contract for transfer of industrial property rights*

An application file for registration of an industrial property object licence contract or of an industrial property right assignment contract shall contain:

1. A declaration for registration, made according to the sample form.



2. The original or a valid copy of the contract.
3. The original of the protection title in the case of an industrial property right assignment.
4. The co-owners' written consent, or a written explanation of the reason for disagreement of any co-owner with the right assignment where the industrial property right is under joint ownership.
5. Receipt for payment of fees and charges.
6. A power of attorney, if the application file is filed by a representative.

Article 150 *Processing application files for registration of contracts for transfer of industrial property rights*

The Government shall provide regulations on the order and procedures for receiving and processing application files for registration of industrial property object licence contracts and of industrial property right assignment contracts.

CHAPTER XI

Industrial Property Representation

Article 151 *Industrial property representation services*

1. Industrial property representation services shall comprise:
 - (a) Representing organizations or individuals before competent State bodies in the establishment and enforcement of industrial property rights;
 - (b) Providing consultancy on issues related to procedures for the establishment and enforcement of industrial property rights;
 - (c) Other services related to procedures for the establishment and enforcement of industrial property rights.
2. Industrial property representatives shall comprise organizations providing industrial property representation services (hereinafter referred to as *industrial property representation service organizations*) and individuals practicing industrial property representation within such organizations (hereinafter referred to as *industrial property agents*).

Article 152 *Scope of rights of industrial property representatives*

1. Industrial property representation service organizations shall only provide services within the scope of authorization and may re-authorize other industrial property representation service organizations when they obtain written consent from the authorizing parties.
2. Industrial property representation service organizations may voluntarily waive their industrial property representation service business after having lawfully transferred all incomplete representation jobs to other industrial property representation service organizations.
3. Industrial property representatives must not perform the following activities:



- (a) Concurrently represent different parties in dispute over industrial property rights;
- (b) Withdraw applications for protection titles, declare waiver of protection or withdraw appeals against the establishment of industrial property rights without consent from the authorizing parties;
- (c) Deceive their clients regarding contracts for industrial property representation services or force their clients to enter into and perform such contracts.

Article 153 *Responsibilities of industrial property representatives*

1. Industrial property representatives shall have the following responsibilities:
 - (a) To clearly notify fee and charge amounts and rates related to procedures for establishment and enforcement of industrial property rights, and service charge amounts and rates according to the service charge tariff registered at the State administrative body for industrial property rights;
 - (b) To keep confidential information and documents related to cases in which they act as representatives;
 - (c) To truthfully and fully inform represented parties of all notices and requests from the State body competent to establish and enforce industrial property rights; to deliver on time to the represented parties protection titles and other decisions;
 - (d) To protect the rights and legitimate interests of represented parties by promptly satisfying all requests regarding represented parties from the State body competent to establish and enforce industrial property rights;
 - (dd) To notify the State body competent to establish and enforce industrial property rights of all changes in the names, addresses of and other information about the represented parties when necessary.
2. Industrial property representation service organizations shall be civilly liable to the represented parties for representation performed by industrial property agents on behalf of such service organizations.

Article 154 *Conditions applicable to industrial property representation service business*

Organizations which satisfy the following conditions shall be permitted to provide industrial property representation services as industrial property representation service organizations:

1. Being a business or organization which practises law, or a scientific and technological service organization lawfully established and operating.
2. Having the function of providing industrial property representation services, which is stated in its business registration certificate or operation registration certificate (hereinafter both referred to as *business registration certificate*).
3. The head of such organization or person authorized by the head must satisfy the conditions for industrial property representation service practice stipulated in clause 1 of article 155 of this Law.



Article 155 *Conditions applicable to industrial property representation service practices*

1. An individual who satisfies the following conditions shall be permitted to practice industrial property representation service:
 - (a) Having an industrial property representation service practising certificate;
 - (b) Working for one industrial property representation service organization.
2. Any individual who satisfies the following conditions shall be granted an industrial property representation service practising certificate:
 - (a) Being a Vietnamese citizen with full capacity for civil acts;
 - (b) Residing permanently in Vietnam;
 - (c) Having a university degree;
 - (d) Having been engaged personally in the domain of industrial property law for five consecutive years or more, or in the examination of assorted industrial property registration applications at national or international industrial property offices for five consecutive years or more, or having graduated from a training course on industrial property law recognized by the competent body;
 - (dd) Not being a civil servant working in the State body competent to establish and enforce industrial property rights;
 - (e) Having passed an examination on the industrial property representation profession organized by the competent body.
3. The Government shall provide detailed programs on industrial property law training and on examinations for the industrial property representation profession, and on the grant of industrial property representation service practising certificates.

Article 156 *Recording and deleting names of industrial property representation service organizations; withdrawal of industrial property representation service practising certificates*

1. Organizations and individuals who satisfy the conditions for industrial property representation service business or practice stipulated in articles 154 and 155 of this Law shall, at their request, be recorded in the National Register of Industrial Property Representatives and published in the Official Gazette of Industrial Property by the State administrative body for industrial property rights.
2. Where there are grounds to confirm that an industrial property representative no longer satisfies the business or practising conditions stipulated in articles 154 and 155 of this Law, the State administrative body for industrial property rights shall delete the name of such industrial property representative in the National Register of Industrial Property and publish such deletion in the Official Gazette of Industrial Property.
3. Industrial property representation service organizations which breach the provisions of clause 3 of article 152 and article 153 of this Law shall be dealt with in accordance with law.
4. Industrial property agents who make professional mistakes while practising or who breach the provisions of clause 3(c) of article 152 and clause 1(a) of article 153 of this Law shall, depending on



the nature and seriousness of their mistake or breach, be subject to a caution, monetary fine or withdrawal of their industrial property representation service practising certificate.

PART IV

Rights to Plant Varieties

CHAPTER XII

Conditions for Protection of Rights to Plant Varieties

Article 157 *Organizations and individuals whose rights to plant varieties are eligible for protection*

1. *Organizations and individuals whose rights to plant varieties are eligible for protection* means those who select and breed or discover and develop plant varieties or who invest in the selection and breeding or the discovery and development of plant varieties or to whom rights to plant varieties are transferred.
2. Organizations and individuals defined in clause 1 of this Article shall include Vietnamese organizations and individuals; organizations and individuals of foreign countries which have concluded agreements on the protection of plant varieties with the Socialist Republic of Vietnam; and foreign organizations and individuals with permanent residential addresses in Vietnam or with establishments producing or trading in plant varieties in Vietnam.

Article 158 *General conditions for plant varieties to be eligible for protection*

Plant varieties eligible for protection means plant varieties which have been selected and bred or discovered and developed, are on the list of State protected plant species promulgated by the Ministry of Agriculture and Rural Development; and are new, distinct, uniform, stable and designated by proper denominations.

Article 159 *Novelty of a plant variety*

A plant variety shall be deemed new if reproductive materials or harvested materials of such variety have not yet been sold or otherwise distributed for the purpose of exploitation in the territory of Vietnam by the registration right holder defined in article 164 of this Law or his or her licensee one (1) year before the filing date of the application for registration, or for exploitation outside the territory of Vietnam six (6) years before the filing date of the application for registration for timber trees or vines, or four (4) years for other plant varieties.

Article 160 *Distinctness of a plant variety*

1. A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application or on the priority date, as the case may be.
2. Plant varieties whose existence is a matter of common knowledge defined in clause 1 of this article mean those falling into one of the following cases:



- (a) Their reproductive materials or harvested materials have been widely used in the market of any country at the time of filing of the application for registration for protection;
- (b) They have been protected or registered on the list of plant species in any country;
- (c) They are the subject matter of an application for registration for protection or registration on the list of plant species in any country, provided that such application has not been rejected;
- (d) Their detailed description has been published.

Article 161 *Uniformity of a plant variety*

A plant variety shall be deemed uniform if, subject to variation which may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 162 *Stability of a plant variety*

A plant variety shall be deemed stable if its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

Article 163 *Denominations⁸ of plant varieties*

1. The registrant must designate a proper denomination for a plant variety which must be the same as the denomination registered in any country where and when an application for registration for protection was filed.
2. The denomination of a plant variety shall be deemed proper if it is distinguishable from those of other plant varieties of common knowledge within the same or similar species.
3. Denominations of plant varieties shall be deemed improper in the following cases:
 - (a) They consist of numerals only, except where such numerals are relevant to characteristics or the breeding of such variety;
 - (b) They violate social ethics;
 - (c) They may easily mislead as to features or characteristics of such variety;
 - (d) They may easily mislead as to identification of the breeder;
 - (dd) They are identical or confusingly similar to marks, trade names or geographical indications protected before the date of publication of the application for registration for protection of such plant variety;
 - (e) They are identical or similar to the denomination of a harvested material of such plant variety;
 - (g) They affect prior rights of other organizations or individuals.

⁸ Alternative translation: Names of plant varieties.



4. Organizations and individuals who offer for sale or bring onto the market reproductive materials of plant varieties must use the denominations of such plant varieties as stated in protection titles even after the expiration of the protection terms.
5. When denominations of plant varieties are combined with marks, trade names or indications similar to denominations of plant varieties already registered for offer for sale or brought onto the market, such denominations must still be distinguishable.

CHAPTER XIII

Establishment of Rights to Plant Varieties

SECTION 1

Establishment of Rights to Plant Varieties

Article 164 *Registration of rights to plant varieties*

1. In order to obtain protection of rights to plant varieties, an organization or individual must file an application for registration for protection with the State administrative body for rights to plant varieties.
2. Organizations and individuals having the right to register plant varieties for protection (hereinafter referred to as *registrants*) shall include:
 - (a) Breeders who have personally selected and bred or discovered and developed the plant variety by their own efforts and at their own expense;
 - (b) Organizations and individuals who fund breeders to select and breed or discover and develop the plant variety by job assignment or hiring, unless otherwise agreed;
 - (c) Organizations and individuals to whom are transferred, or who inherit the right to register for protection of the plant variety.
3. For plant varieties which are selected and bred or discovered and developed with the use of State Budget funds or under projects managed by the State, the rights to such plant varieties shall belong to the State. The Government shall issue specific regulations governing the registration of rights to plant varieties stipulated in this clause.

Article 165 *Method of filing applications for registration of rights to plant varieties*

1. Any Vietnamese organization or individual, or foreign organization or individual with a permanent residential address in Vietnam or who has a plant variety production or trading establishment in Vietnam may file an application for registration of rights to a plant variety (hereinafter referred to as *protection registration application*) either directly or by a lawful representative in Vietnam.
2. Any foreign organization or individual without a permanent residential address in Vietnam or without a plant variety production or trading establishment in Vietnam may file an application for registration of rights to a plant variety by a lawful representative in Vietnam.

Article 166 *"First to file" principle applicable to plant varieties*



1. Where two or more parties independently file applications for registration for protection on different days for the same plant variety, a plant variety protection certificate shall only be granted to the earliest valid registrant.
2. Where there are a number of applications for registration for protection of the same plant variety filed on the same day, a plant variety protection certificate shall only be granted to the registrant whose name is used for the filing of the sole application as agreed upon by all the other registrants. Where these registrants fail to reach agreement, the State administrative body for rights to plant varieties shall consider a grant of a plant variety protection certificate to the party deemed to be the first breeder who selected and bred or discovered and developed such variety.

Article 167 *Priority principle applicable to protection registration applications*

1. A registrant may claim priority right where an application for registration for protection is filed within twelve (12) months from the date of filing an application for registration for protection for the same plant variety in a country which has concluded an agreement on plant variety protection with the Socialist Republic of Vietnam. The date on which the first filing occurred shall not be included in this time-limit.
2. In order to enjoy priority right, the registrant must express the claim for the priority right in his or her application for registration for protection. Within three (3) months after filing the application, the registrant must produce copies of documents on the first application certified by the competent body and samples or other evidence proving that the variety in both applications was the same, and the registrant must pay a fee. The registrant may supply necessary information, documents or materials to the State administrative body for rights to plant varieties for examination according to the provisions of articles 176 and 178 of this Law within two (2) years of expiry of the duration for enjoying the priority right, or within an appropriate duration depending on the species of the plant variety stated in the application after a first application is rejected or withdrawn.
3. Where an application for registration for protection is eligible for priority right, the priority date shall be the first filing date.
4. Within the time-limit stipulated in clause 1 of this article, the filing of another application or the publication or use of the plant variety the subject matter of the first application for registration for protection shall not be deemed a ground for rejecting the application for registration for protection eligible for the priority right.

Article 168 *Plant variety protection certificates, and the National Register of Protected Plant Varieties*

1. A protection certificate for a plant variety shall state the denomination and species of such variety, the name of the owner of rights to such plant variety (hereinafter referred to as the *protection certificate holder*), the name of the plant variety breeder and the duration of the term of protection of rights to the plant variety.
2. The State administrative body for rights to plant varieties shall record the grant and contents of a protection certificate in the National Register of Protected Plant Varieties, and shall archive such information.

Article 169 *Validity of plant variety protection certificates*

1. A plant variety protection certificate shall be valid throughout the entire territory of Vietnam.



2. Plant variety protection certificates shall be valid from the grant date up until the expiry of a period of twenty-five (25) years for timber trees and vines; and of twenty (20) years for other plant varieties.
3. Plant variety protection certificates may have their validity terminated or they may be invalidated pursuant to the provisions of articles 170 and 171 of this Law.

Article 170 *Suspension and restoration of validity of plant variety protection certificates*

1. The validity of a plant variety protection certificate may be suspended in the following cases:
 - (a) The protected plant variety no longer satisfies the conditions of uniformity and stability as at the time of grant of the certificate;
 - (b) The protection certificate holder fails to pay the validity maintenance fee according to regulations;
 - (c) The protection certificate holder fails to supply necessary documents and reproductive materials for maintaining and preserving the plant variety according to regulations;
 - (d) The protection certificate holder fails to change the denomination of the plant variety at the request of the State administrative body for rights to plant varieties.
2. In the cases stipulated in sub-clauses (a), (c) and (d) of clause 1 of this article, the relevant State administrative body for rights to plant varieties shall issue a decision on suspension of validity of the plant variety protection certificate.
3. In the case stipulated in sub-clause (b) of clause 1 of this article, upon the expiry of the time-limit for payment of the validity maintenance fee, the relevant State administrative body for rights to plant varieties shall issue a decision on suspension of validity of the plant variety protection certificate as from the first day of the next valid year for which the validity maintenance fee was not paid.
4. In the case stipulated in sub-clause (a) of clause 1 of this article, any organization or individual may request the State administrative body for rights to plant varieties to suspend the validity of the plant variety protection certificate.

Based on the results of considering the application for suspension of a plant variety protection certificate and the opinions of relevant parties, the relevant State administrative body for rights to plant varieties shall either issue a decision to suspend the validity of the certificate or shall refuse the application.

5. In the cases stipulated in clause 1 of this article, the relevant State administrative body for rights to plant varieties shall publish such suspension in a specialized magazine, clearly stating the reasons therefor, and concurrently send a notice thereon to the certificate holder. Within thirty (30) days from the date of notification, the certificate holder may file a request for application of remedies to the reasons why validity was suspended with the State administrative body for rights to plant varieties and pay the fee for restoration of validity of the plant variety protection certificate. Within ninety (90) days after the date of filing the request, the protection certificate holder must remedy the reasons why validity was suspended, applicable to the cases stipulated in sub-clauses (b), (c) and (d) of clause 1 of this article. The State administrative body for rights to plant varieties shall consider and restore the validity of the protection certificate and publish such restoration in a specialized magazine.



In the case stipulated in sub-clause (a) of clause 1 of this article, the validity of the plant variety protection certificate shall be restored after its holder successfully proves that the plant variety has satisfied the conditions of uniformity and stability and after this has been so certified by the State administrative body for rights to plant varieties.

Article 171 *Cancellation of effectiveness of plant variety protection certificates*

1. The effectiveness of a plant variety protection certificate shall be cancelled in the following cases:
 - (a) The application for registration for protection of the plant variety was filed in the name of a person who did not have the registration right, except where the right to such plant variety was assigned to the holder of the registration right;
 - (b) The protected plant variety failed to satisfy the conditions of novelty or distinctness at the time of grant of the plant variety protection certificate;
 - (c) The plant variety failed to satisfy the conditions of uniformity or stability where the plant variety protection certificate was granted on the basis of results of technical tests conducted by the registrant.
2. During the valid term of a plant variety protection certificate, any organization or individual may request the State administrative body for rights to plant varieties to cancel the effectiveness of a plant variety protection certificate.

Based on the results of the examination of a request for cancellation of effectiveness of a plant variety protection certificate and opinions of the relevant parties, the State administrative body for rights to plant varieties shall either issue a notice of refusal to cancel or shall issue a decision on cancellation of effectiveness of the plant variety protection certificate.

3. Where a plant variety protection certificate is cancelled, all transactions arising on the basis of the grant of the plant variety protection certificate shall be null and void, and such null and void transactions shall be dealt with in compliance with the *Civil Code*.

Article 172 *Amendment and re-grant of plant variety protection certificates*

1. A protection certificate holder may request the State administrative body for rights to plant varieties to amend or correct errors related to the name and address of the holder, on payment of fees and charges. Where such errors were made by the State administrative body for rights to plant varieties, such body must correct such errors, and protection certificate holders shall not have to pay fees and charges.
2. A protection certificate holder may request the State administrative body for rights to plant varieties to re-grant a plant variety protection certificate when such certificate was lost or damaged, provided that the holder pays fees and charges.

Article 173 *Publication of decisions related to plant variety protection certificates*

Decisions on the grant, re-grant, suspension, cancellation, and amendment of plant variety protection certificates shall be published by the State administrative body for rights to plant varieties in a specialized magazine on plant varieties within sixty (60) days after such decisions are issued.

SECTION 2



Applications for Registration for Protection, and Processing Applications

Article 174 *Applications for registration for protection*

1. An application for registration for protection [of a plant variety] shall contain the following documents:
 - (a) A declaration for registration made on the stipulated sample form;
 - (b) Photos and a technical declaration made on the stipulated sample form;
 - (c) Power of attorney, where the application is filed through a representative;
 - (d) Documents evidencing the registration right where the registrant is a transferee of the registration right;
 - (dd) Documents evidencing the priority right where the application contains a claim for priority right;
 - (e) Receipt for payment of fees and charges.

2. Applications for registration for protection and source documents of transactions between an applicant for registration and the State administrative body for rights to plant varieties shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the State administrative body for rights to plant varieties:
 - (a) Power of attorney;
 - (b) Documents evidencing the registration right;
 - (c) Documents evidencing the priority right;
 - (d) Other documents supporting the application.

3. Documents evidencing the priority right of an application for registration for protection of rights to a plant variety shall comprise:
 - (a) Copies of the first application(s) certified by the receiving agency;
 - (b) Documents on transfer or inheritance of the priority right if such right is acquired from another person.

4. Each application shall be registered only for the protection of one plant variety.

Article 175 *Receipt of applications for registration for protection, and filing dates*

1. An application for registration for protection shall be received by the relevant State administrative body for rights to plant varieties only when the application encloses all the documents stipulated in clause 1 of article 174 of this Law.

2. The filing date of an application shall be the date on which such application is received by the relevant State administrative body for rights to plant varieties.



Article 176 *Formal examination of applications for registration for protection*

1. The State administrative body for rights to plant varieties shall conduct a formal examination of an application within fifteen (15) days of receipt of such application, in order to determine the validity of such application.
2. An application for registration for protection shall be deemed invalid in the following cases:
 - (a) It fails to satisfy the formal requirements as stipulated;
 - (b) The plant variety stated in such application does not belong to a plant species on the list of protected plant species;
 - (c) The application is filed by a person who does not have the registration right, including where the registration right belongs to many organizations or individuals but one or more of them do not agree to register.
3. The State administrative body for rights to plant varieties shall carry out the following procedures:
 - (a) Notify a refusal to accept the application in the cases stipulated in sub-clauses (b) and (c) of clause 2 of this article, clearly stating the reasons therefor;
 - (b) Notify the registrant of errors for correction in the case stipulated in sub-clause (a) of clause 2 of this article, setting a time-limit of thirty (30) days after the receipt of the notice for the correction of such errors by the registrant;
 - (c) Notify the refusal to accept the application where the registrant fails to correct errors or where the registrant does not make a reasonable appeal against the notice stipulated in sub-clause (b) of this clause;
 - (d) Notify the acceptance of the application, requesting the registrant to supply samples of the plant variety to the testing institution for performance of technical tests and procedures stipulated in article 178 of this Law where such application is valid or where the registrant has properly corrected the errors or made a justifiable opposition to the notice stipulated in sub-clause (b) of this clause.

Article 177 *Publication of applications for registration for protection*

1. Where an application is accepted as valid, the State administrative body for rights to plant varieties shall publish such valid application in a specialized magazine on plant varieties within ninety (90) days from the date of acceptance of the application.
2. The published contents of an application shall include the serial number and filing date of the application, the representative agent (if any), the registrant, the owner, the denomination of the plant variety, the name of the plant species, and the date on which the application was accepted as valid.

Article 178 *Substantive examination of contents of applications for registration for protection*

1. The State administrative body for rights to plant varieties shall conduct a substantive examination of applications already accepted as valid. The examination shall cover:
 - (a) Examination of the novelty and proper denomination of the plant variety;



- (b) Examination of results of technical tests of the plant variety.
2. *Technical tests* means experiments conducted to determine the distinctness, uniformity and stability of a plant variety.

The technical test shall be conducted by the competent State body or by an organization or individual capable of testing plant varieties in compliance with regulations of the Ministry of Agriculture and Rural Development.

The State administrative body for rights to plant varieties may use previously obtained technical test results.

3. The time-limit for examination of technical test results shall be ninety (90) days from the date of receipt of such technical test results.

Article 179 *Amendment and supplementation of applications for registration for protection*

1. Before the relevant State administrative body for rights to plant varieties notifies a refusal to grant a plant variety protection certificate or notifies its decision on grant of a plant variety protection certificate, the registrant shall have the following rights:
- (a) To amend or supplement the application without changing the nature of the application;
 - (b) To request the recording of changes of the registrant's name or address;
 - (c) To request the recording of a change of registrant due to assignment of the application pursuant to a contract or as a result of inheritance or bequest.
2. The person requesting the conduct of the procedures stipulated in clause 1 of this article must pay fees and charges.

Article 180 *Withdrawal of applications for registration for protection*

1. Before the relevant State administrative body for rights to plant varieties decides or refuses to grant a plant variety protection certificate, the registrant may withdraw the application. A request for withdrawal of an application must be made in writing.
2. From the moment a registrant withdraws an application for registration for protection, all subsequent procedures related to such application shall cease; and fees and charges already paid for procedures which have not yet been carried out shall be refunded at the request of the registrant.

Article 181 *Opinions of third parties on the grant of a plant variety protection certificate*

As from the date of publication of an application for registration for protection of a plant variety in a specialized magazine on plant varieties up until before a decision on grant of a plant variety protection certificate is issued, any third party shall be permitted to provide an opinion to the State administrative body for rights to plant varieties challenging the grant of such plant variety protection certificate. An opinion must be made in writing and accompanied by documents and evidence to support it.

Article 182 *Refusal to grant a plant variety protection certificate*

An application for registration for protection shall be rejected and the grant of a plant variety protection certificate refused where the relevant plant variety fails to satisfy the conditions stipulated in articles 176



and 178 of this Law. In a case of refusal to grant a plant variety protection certificate, the State administrative body for rights to plant varieties shall carry out the following procedures:

1. Notify the intended refusal to grant a plant variety protection certificate, clearly stating the reasons therefor and setting a time-limit for the registrant to correct errors or oppose the intended refusal.
2. Notify the refusal to grant a plant variety protection certificate where the registrant fails to correct errors and makes no opposition to the intended refusal stipulated in clause 1 of this article.
3. Carry out the procedures stipulated in article 183 of this Law where the registrant has corrected errors or made a justifiable opposition to the intended refusal stipulated in clause 1 of this article.

Article 183 *Grant of plant variety protection certificates*

Where an application for registration for protection is not rejected as provided for in article 182 of this Law and the registrant pays the fee, the State administrative body for rights to plant varieties shall issue a decision granting a plant variety protection certificate and shall record it in the National Register of Protected Plant Varieties.

Article 184 *Complaints about the grant or the refusal to grant a plant variety protection certificate*

1. The registrant and any third party shall have the right to lodge a complaint about the decision or the refusal to grant a plant variety protection certificate.
2. The resolution of complaints about a decision or refusal to grant a plant variety protection certificate shall comply with the law on complaints and denunciations.

CHAPTER XIV

Contents of and Limitations on Rights to Plant Varieties

SECTION 1

Contents of Rights to Plant Varieties

Article 185 *Rights of breeders of plant varieties*

The breeder of a plant variety shall have the following rights:

1. To have his or her name as the breeder recorded in the plant variety protection certificate, the National Register of Protected Plant Varieties, and published documents on the plant variety.
2. To receive remuneration pursuant to the provisions of clause 1(a) of article 191 of this Law.

Article 186 *Rights of protection certificate holders*

1. A protection certificate holder shall have the right to exercise or authorize others to exercise the following rights to reproductive materials of a protected plant variety:
 - (a) To conduct production or propagation;



- (b) To process the reproductive materials for the purpose of propagation;
 - (c) To offer the reproductive materials for sale;
 - (d) To sell the reproductive materials or to conduct other marketing activities;
 - (dd) To export the reproductive materials;
 - (e) To import the reproductive materials;
 - (g) To stock reproductive materials for the purposes specified in sub-clauses (a) to (e) inclusive of this clause.
2. To prevent others from using the plant variety according to the provisions of article 188 of this Law.
 3. To bequeath or transfer the rights to the plant variety according to the provisions of Chapter XV of this Law.

Article 187 *Extension of rights of protection certificate holders*

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties which originate from the protected plant variety, except where such protected plant variety itself originates from another protected plant variety.
2. A plant variety shall be deemed to originate from a protected plant variety if such plant variety still retains the expression of the essential characteristics resulting from the genotype or combination of genotypes of the protected variety, except for differences resulting from an impact on the protected variety.
3. Plant varieties which are not definitely distinct from the protected plant variety.
4. Plant varieties, the production of which requires the repeated use of the protected plant variety.

Article 188 *Acts constituting an infringement of the right to a plant variety*

The following acts shall be deemed an infringement of the rights of a protection certificate holder:

1. Exploiting or using rights of such protection certificate holder without his or her permission.
2. Using a plant variety denomination which is identical or similar to a denomination protected for a plant variety of the same species or a species closely linked to the protected plant variety.
3. Using a protected plant variety without paying remuneration in accordance with article 189 of this Law.

Article 189 *Provisional rights to plant varieties*

1. Provisional rights to a plant variety means rights of the registrant for protection of such plant variety, which arise from the date of publication of the application for registration for protection until the date of grant of the plant variety protection certificate. Where a plant variety protection certificate is not granted for such plant variety, the protection registrant shall not [no longer] have these provisional rights.



2. Where the registrant is aware of the fact that the plant variety registered for protection is being used by another person for commercial purposes, the plant variety protection registrant may notify in writing such user of the fact that an application for registration for protection of the plant variety has been filed, clearly specifying the filing date and the date of publication of such application, so that the user may either stop using or continue using the plant variety.
3. Where a user who has been notified in accordance with clause 2 of this article continues using the plant variety, the plant variety protection certificate holder shall have the right, upon the grant of the certificate, to demand such plant variety user pay compensation equivalent to the licensing price of such plant variety within the corresponding use scope and duration.

SECTION 2

Limitations on Rights to Plant Varieties

Article 190 *Limitations on rights of plant variety protection certificate holders*

1. The following acts shall not be deemed an infringement of the right to a protected plant variety:
 - (a) Using the plant variety for personal and non-commercial purposes;
 - (b) Using the plant variety for cross-breeding for scientific research purposes;
 - (c) Using the plant variety to create new plant varieties distinct from the protected plant varieties;
 - (d) Using harvested materials of the protected plant variety by an individual production household for self-propagation and cultivation in the next season on the land area belonging to such household.
2. The right to a plant variety shall not be applicable to acts related to materials of the protected plant variety which are sold on or otherwise brought onto the domestic or overseas market by the protection certificate holder or his or her licensee, except for the following acts:
 - (a) Acts relating to further propagation of such plant variety;
 - (b) Acts relating to export of reproductive materials of such plant variety to countries where the genus or species of such plant variety is not protected, except where such materials are exported for consumption purposes.

Article 191 *Obligations of protection certificate holders and breeders of plant varieties*

1. A protection certificate holder shall have the following obligations:
 - (a) To pay remuneration to the breeder of the plant variety as agreed upon; in the absence of such agreement, the remuneration level must comply with the provisions of law;
 - (b) To pay the fee for maintenance of validity of the plant variety protection certificate in accordance with regulations;
 - (c) To preserve the protected plant variety, to supply reproductive materials of the protected plant variety to the State administrative body for rights to plant varieties, and to maintain the stability of the protected plant variety in accordance with regulations.



2. The breeder of a plant variety shall be obliged to help the protection certificate holder to maintain reproductive materials of the protected plant variety.

CHAPTER XV

Transfer of Rights to Plant Varieties

Article 192 *Licensing of plant varieties*

1. *Licensing of a plant variety* means permission from the protection certificate holder to another person to conduct one or more acts within the holder's right to use the plant variety.
2. Where the right to use a plant variety is under co-ownership, the licensing of such plant variety to another person must be consented to by all co-owners.
3. The licensing of a plant variety must be effected in the form of a written contract.
4. A plant variety licensing contract must not contain terms which unreasonably restrict the rights of the licensee, particularly restrictions neither deriving from nor aimed at protecting the rights of the licensor to the licensed plant variety.

Article 193 *Rights of parties to a licensing contract*

1. The licensor shall have the right to permit or not permit the licensee to sub-license to a third party.
2. The licensee shall have the following rights:
 - (a) To license the use right to a third party if so permitted by the licensor;
 - (b) To request the licensor to take necessary and appropriate measures to prevent infringement by a third party causing loss and damage to the licensee;
 - (c) To take necessary measures to prevent a third party's infringements if, within a time-limit of three months from the date of receipt of the request stipulated in sub-clause (b) above, the licensor fails to act as requested.

Article 194 *Assignment of rights to plant varieties*

1. *Assignment of rights to a plant variety* means the transfer by the plant variety protection certificate holder to the assignee of all rights to such plant variety. The assignee shall become the plant variety protection certificate holder from the date of registration of the assignment contract with the State administrative body for rights to plant varieties in accordance with procedures stipulated by law.
2. Where rights to a plant variety are under joint ownership, the assignment of such rights to another person must be consented to by all co-owners.
3. The assignment of rights to a plant variety must be effected in the form of written contract.

Article 195 *Bases and conditions for compulsory licensing of plant varieties*



1. In the following cases, the rights to use a plant variety may be licensed to another organization or individual pursuant to a decision of the competent State body defined in clause 1 of article 196 of this Law without permission from the protection certificate holder or his or her exclusive licensee (hereinafter referred to as the *holder of the exclusive right to use the plant variety*):
 - (a) The use of such plant variety is for the public interest and non-commercial purposes, or in service of national defence and security, food security and nutrition of the people or to meet other urgent social needs;
 - (b) The persons having the need and capacity to use such plant variety fail to reach agreement with the holder of the exclusive right to use such plant variety on the entry into a licensing contract though they have made best efforts within a reasonable period of time to negotiate a satisfactory price and commercial conditions;
 - (c) The holder of the exclusive right to use such plant variety is deemed to have conducted anti-competitive practices prohibited by the law on competition.
2. The holder of the exclusive right to use a plant variety may request termination of the use right when the bases for licensing stipulated in clause 1 of this article cease to exist and are unlikely to recur, provided that termination of such use right will not be prejudicial to the licensee.
3. The right to use a plant variety licensed pursuant to a decision of a competent State body must satisfy the following conditions:
 - (a) Such licensed use right is non-exclusive;
 - (b) Such licensed use right is limited within a scope and duration sufficient to attain the licensing objective, and is largely for the domestic market except for the case stipulated in sub-clause (c) of clause 1 of this article;
 - (c) The licensee must not assign the use right to another person, except where the assignment is made together with the transfer of the business establishment of the licensee, and the licensee must not sub-license to others;
 - (d) The licensee must pay adequate compensation to the holder of the exclusive right to use the plant variety, taking into account the economic value of such use right in each specific case and in compliance with the compensation rate bracket promulgated by the Government.
4. The Government shall specify cases of compulsory licensing of plant varieties and the compensation rate bracket stipulated in sub-clause (d) of clause 3 of this article.

Article 196 *Authority and procedures for licensing of plant varieties pursuant to compulsory decisions*

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing of plant varieties in the domains over which such Ministry exercises State management on the basis of considering licensing requests for the cases stipulated in clause 1 of article 195 of this Law.

Ministries and ministerial equivalent bodies shall, after consulting the opinion of the Ministry of Agriculture and Rural Development, issue decisions on licensing of plant varieties in domains under their respective management for the cases stipulated in clause 1 of article 195 of this Law.

2. Plant variety licensing decisions must set the use scope and conditions in compliance with the provisions of clause 3 of article 195 of this Law.



3. The State body competent to issue a decision licensing a plant variety must promptly notify such decision to the holder of the exclusive right to use the plant variety in question.
4. Decisions on licensing of plant varieties or refusal to license plant varieties may be the subject of complaints lodged or lawsuits instituted in accordance with law.
5. The Government shall provide detailed guidelines on the procedures for compulsory licensing of plant varieties as stipulated in this article.

Article 197 *Rights of protection certificate holders in cases of compulsory licensing of plant varieties*

A protection certificate holder subject to compulsorily licensing of the plant variety shall have the following rights:

1. To receive compensation corresponding to the economic value of the licensed use right or equivalent to the licensing price under a contract with an equivalent scope and term.
2. To request the State administrative body for rights to plant varieties to amend, terminate validity of or invalidate the compulsory licensing when the conditions for such compulsory licensing no longer exist and when such amendment, termination of validity or invalidation will not cause loss and damage to the licensees who derived their right from the compulsory licensing.

PART V

Protection of Intellectual Property Rights

CHAPTER XVI

General Provisions on Protection of Intellectual Property Rights

Article 198 *Right to self-protection*

1. An intellectual property right holder shall have the right to apply the following measures to protect the intellectual property rights of such holder:
 - (a) To apply technological measures to prevent acts of infringement of its intellectual property rights;
 - (b) To request any organization or individual who commits an act of infringement of the intellectual property rights of the holder to terminate such act, make a public apology or rectification, and pay damages;
 - (c) To request the competent State body to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws;
 - (d) To initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.



2. Organizations and individuals who suffer loss and damage caused by acts of infringement of intellectual property rights or who discover acts of infringement of intellectual property rights which cause loss and damage to consumers or society shall have the right to request the competent State body to deal with such acts in accordance with the provisions of this Law and other relevant laws.
3. Organizations and individuals who suffer loss and damage or who are likely to suffer loss and damage caused by acts of unfair competition shall have the right to request the competent State body to apply the civil remedies stipulated in article 202 of this Law and the administrative remedies stipulated in the law on competition.

Article 199 *Remedies when dealing with acts of infringement of intellectual property rights*

1. Any organization or individual who commits an act of infringement of the intellectual property rights of another organization or individual shall, depending upon the nature and seriousness of such infringement, be dealt with by the application of civil, administrative or criminal remedies.
2. In necessary cases, the competent State body may apply provisional urgent measures, measures to control intellectual property related imports and exports, preventive measures and measures to secure enforcement of an administrative penalty in accordance with the provisions of this Law and other relevant laws.

Article 200 *Authority for dealing with acts of infringement of intellectual property rights*

1. The following bodies shall, within the scope of their respective duties and powers, have authority to deal with acts of infringement of intellectual property rights: courts, inspectorates, market management offices, customs offices, police offices and people's committees at all levels.
2. The application of civil and criminal remedies shall fall within the authority of courts. In necessary cases, courts may apply provisional urgent measures stipulated by law.
3. The application of administrative remedies shall fall within the authority of inspectorates, police offices, market management offices, customs offices and people's committees at all levels. In necessary cases, such bodies may apply preventive measures stipulated by law or measures to secure payment of administrative fines stipulated by law.
4. The application of measures to control intellectual property related imports and exports shall fall within the authority of customs offices.

Article 201 *Intellectual property assessment*

1. *Intellectual property assessment* means the use by competent organizations or individuals of their professional knowledge and expertise to make an assessment of and conclusions on matters related to cases of infringement of intellectual property rights.
2. A State body competent to deal with acts of infringement of intellectual property rights shall have the right to arrange for an intellectual property assessment while dealing with a case for which such body has accepted jurisdiction.
3. Intellectual property right holders and other related organizations and individuals shall have the right to request an intellectual property assessment in order to protect the legitimate rights and interests of such holder, organization or individual.



4. The Government shall provide detailed guidelines on activities being intellectual property assessment.

CHAPTER XVII

Application of Civil Remedies in Dealing with Infringements of Intellectual Property Rights

Article 202 *Civil remedies*

Courts may apply the following civil remedies in dealing with organizations and individuals who have committed acts of infringement of intellectual property rights:

1. Compulsory termination of the infringing acts.
2. Compulsory public apology and rectification.
3. Compulsory performance of civil obligations.
4. Compulsory payment of damages for loss.
5. Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and materials, and facilities used principally for the production or trading of goods which infringed intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right holders.

Article 203 *Burden of proof of litigants*⁹

1. The plaintiff and the defendant to a lawsuit regarding infringement of intellectual property rights shall bear the burden of proof stipulated in article 79 of the Civil Procedure Code and this article.
2. The plaintiff must prove that the plaintiff is the intellectual property right holder by leading one of the following forms of evidence:
 - (a) Copies of the copyright registration certificate, related right registration certificate or protection title; or an extract of the National Register of Copyright and Related Rights, the National Register of Industrial Property or the National Register of Protected Plant Varieties;
 - (b) Necessary evidence proving the basis for establishment of copyright or related rights in the absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the right to a trade secret, trade name or well known mark;
 - (c) Copy of the license contract for an intellectual property object where the use right is licensed pursuant to a contract.
3. The plaintiff shall bear the burden of proving acts of infringement of intellectual property rights or acts of unfair competition.

⁹ Alternative translations: "Applicants, interested parties".



4. In a lawsuit regarding infringement of the right to an invention which is a production process, the defendant shall bear the burden of proving that the product of the defendant was produced by a process other than the protected process in the following cases:
 - (a) The product made by the protected process is new;
 - (b) The product made by the protected process is not new, but the invention owner believes that the product of the defendant is made by the protected process and fails to identify the process used by the defendant in spite of having applied appropriate measures.
5. Where a party to a lawsuit regarding infringement of intellectual property rights can prove that appropriate evidence proving such party's claim is under the control of the other party and is therefore inaccessible, the former party shall have the right to request the court to compel the latter party to produce such evidence.
6. When making a claim for compensation for damages for loss, the plaintiff must prove the plaintiff's actual loss and damage and specify the basis for determining the amount of compensation for damages in accordance with article 205 of this Law.

Article 204 *Principles for determining loss and damage caused by an infringement of intellectual property rights*

1. Loss and damage caused by acts of infringement of industrial property rights shall comprise:
 - (a) Material loss and damage including property loss, decrease in income and profit, loss of business opportunity, and reasonable expenses for mitigating and remedying the material damage;
 - (b) Spiritual loss and damage including damage to honour, dignity, prestige, reputation and other spiritual loss caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout designs; and to breeders of plant varieties.
2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringement of intellectual property rights.

Article 205 *Bases for determining amount of damages for loss and damage caused by an infringement of intellectual property rights*

1. Where the plaintiff proves that an act of infringement of intellectual property rights has caused the plaintiff material damage, the plaintiff shall have the right to request the court to decide the amount of damages on one of the following bases:
 - (a) Total material damage calculated in an amount of money plus profit derived by the defendant as a result of the act of infringement of intellectual property rights, where the reduced profit amount of the plaintiff has not yet been included in such total material damage;
 - (b) The price of the licensing of an intellectual property object on the assumption that the defendant was licensed by the plaintiff to use that object under a license contract within a scope corresponding to the act of infringement which was committed;
 - (c) Where it is impossible to determine the amount of damages for material damage on the bases stipulated in sub-clause (a) and (b) of this clause, such amount of damages shall be set by the



court depending on the extent of loss but must not exceed five hundred million (500,000,000) dong.

2. Where a plaintiff proves that the act of infringement of intellectual property rights caused the plaintiff spiritual damage, the plaintiff shall have the right to request the court to decide on the amount of damages depending on the extent of loss, to range from five million (5,000,000) to fifty million (50,000,000) dong.
3. In addition to the amount of damages stipulated in clauses 1 and 2 of this article, an industrial property right holder shall also have the right to request the court to compel the organization or individual who have committed the act of infringement of industrial property rights to pay reasonable costs of engaging a lawyer.

Article 206 *Right to request the court to apply provisional urgent measures*

1. Upon or after the initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:
 - (a) There is a danger of irreparable damage to such intellectual property right holder;
 - (b) Goods suspected of infringement of intellectual property rights or evidence related to the act of infringement of industrial property rights are likely to be dispersed or destroyed unless they are protected in time.
2. A court may make a decision applying provisional urgent measures at the request of an industrial property right holder as stipulated in clause 1 of this article before hearing the party subject to such measures.

Article 207 *Provisional urgent measures*

1. The following provisional urgent measures may be applied to goods suspected of infringing intellectual property rights or to raw materials and materials, or facilities of production or trading of such goods:
 - (a) Retention;
 - (b) Seizure;
 - (c) Sealing; prohibiting any alteration of the original state; prohibiting any movement;
 - (d) Prohibiting transfer of ownership.
2. Other provisional urgent measures may be applied in accordance with the Civil Procedure Code.

Article 208 *Obligations of applicants for provisional urgent measures*

1. Applicants for provisional urgent measures shall bear the burden of proving their right provided for in clause 1 of article 206 of this Law by producing the documents and evidence stipulated in clause 2 of article 203 of this Law.
2. An applicant for provisional urgent measures shall be obliged to pay compensation for loss caused to a person subject to such measures in a case where the latter is found not to have infringed industrial



property rights. To secure the performance of this obligation, an applicant for provisional urgent measures shall deposit security in one of the following forms:

- (a) A sum of money equal to twenty (20) per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million (20,000,000) dong where it is impossible to value such goods;
- (c) A deed of guarantee issued by a bank or other credit institution.

Article 209 *Cancellation of application of provisional urgent measures*

1. The court shall issue a decision cancelling provisional urgent measures previously applied in the case stipulated in clause 1 of article 122 of the Civil Procedure Code or in a case where the person subject to such measures proves that such application was not well founded.
2. In a case of cancellation of a provisional urgent measure, the court shall consider refunding the applicant the security stipulated in clause 2 of article 208 of this Law. Where a request for the application of a provisional urgent measure was not well founded thus causing loss to the person subject to such measure, the court shall compel the applicant to pay compensation for such loss.

Article 210 *Authority and procedures for application of provisional urgent measures*

The authority and procedures for application of provisional urgent measures shall be implemented in accordance with the provisions of Chapter VIII, Part One of the Civil Procedure Code.

CHAPTER XVIII

Dealing with Infringements of Intellectual Property Rights by Application of Administrative and Criminal Measures; Control of Intellectual Property Related Imports and Exports

SECTION 1

Dealing with Infringements of Intellectual Property Rights by Application of Administrative and Criminal Measures

Article 211 *Acts of infringement of industrial property rights which shall be subject to administrative penalties*

1. The following acts of infringement of industrial property rights shall be subject to administrative penalties:
 - (a) Acts of infringement of intellectual property rights which cause loss and damage to consumers or society;
 - (b) Failure to terminate an act of infringement of intellectual property rights although the intellectual property right holder has issued a written notice requesting termination of such act;
 - (c) Producing, importing, transporting or trading in intellectual property counterfeit goods stipulated in article 213 of this Law, or assigning others to do so;



- (d) Producing, importing, transporting or trading in articles bearing a mark or geographical indication which is identical or confusingly similar to a protected mark or geographical indication, or assigning others to do so.
2. The Government shall specify acts of infringement of intellectual property rights which shall be subject to administrative penalties, the forms and levels of penalties, and the procedures for applying same.
3. Any organization or individual who commits an act of unfair competition in intellectual property shall be subject to an administrative penalty in accordance with the law on competition.

Article 212 *Acts of infringement of industrial property rights which shall be subject to criminal penalties*

Any individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.

Article 213 *Intellectual property counterfeit goods*

1. *Intellectual property counterfeit goods* regulated in this Law comprise goods bearing counterfeit marks and goods bearing counterfeit geographical indications (hereinafter referred to as *counterfeit mark goods*) defined in clause 2 of this article and pirated goods defined in clause 3 of this article.
2. *Counterfeit mark goods* means goods or their packages bearing a mark or sign which is identical with or indistinguishable from a mark or geographical indication currently protected for those very goods, without permission from the mark owner or organization managing the geographical indication.
3. *Pirated goods* means copies made without permission from the copyright holder or related right holder.

Article 214 *Forms of administrative penalty and measures for remedying consequences*

Any organization or individual who commits an act of infringement of intellectual property rights defined in clause 1 of article 211 of this Law shall be compelled to terminate such act and shall be subject to one of the following principal penalties:

- (a) A caution;
- (b) A monetary fine.
2. Any organization or individual who infringes intellectual property rights may, depending on the nature and seriousness of the infringement, also be subject to one of the following additional penalties:
 - (a) Confiscation of intellectual property counterfeit goods, raw materials and materials, and facilities used mainly for production or trading of such intellectual property counterfeit goods;
 - (b) Suspension of business activities for a fixed period in the sector in which the infringement was committed.
3. In addition to the penalties stipulated in clauses 1 and 2 of this article, any organization or individual who infringes intellectual property rights may also be subject to one or more of the following measures for remedying consequences:



- (a) Compulsory destruction, distribution or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials and materials, and facilities used mainly for production or trading of such intellectual property counterfeit goods, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right holders;
 - (b) Compulsory transportation out of the territory of Vietnam of transit goods infringing intellectual property rights or compulsory re-export of intellectual property counterfeit goods and imported materials and raw materials, and facilities used mainly for production or trading of such intellectual property counterfeit goods after the infringing elements have been removed from such goods.
4. The amount of the monetary fine stipulated in sub-clause (b) of clause 1 of this article shall be set at least equal to the value of the detected infringing goods but shall not exceed five times such value.

The Government shall issue detailed regulations on the method of determining the value of infringing goods.

Article 215 *Preventive measures and/or measures to secure enforcement of administrative penalties*

1. In the following cases, organizations and individuals shall have the right to request the competent body to apply preventive measures and/or measures to secure enforcement of the administrative penalties stipulated in clause 2 of this article:
- (a) An act of infringement of intellectual property rights is likely to cause serious loss and damage to consumers or society;
 - (b) Material evidence of the infringement is likely to be dispersed or there are indications that the offender will evade responsibility;
 - (c) In order to secure enforcement of a decision imposing an administrative penalty.
2. Preventive measures and/or measures to secure enforcement of administrative penalties which may be applied in accordance with administrative procedures to acts of infringement of intellectual property rights shall comprise:
- (a) Temporary detention of persons;
 - (b) Temporary custody of infringing goods, material evidence and facilities;
 - (c) Body searches;
 - (d) Searches of means of transport and objects; searches of places where infringing goods, material evidence and facilities are hidden;
 - (dd) Other administrative preventive measures in accordance with the law on dealing with administrative breaches.

SECTION 2

Control of Intellectual Property Related Imports and Exports

Article 216 *Measures to control intellectual property related imports and exports*



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1. Measures to control intellectual property related imports and exports shall comprise:
 - (a) Suspension of customs procedures for goods suspected of infringing intellectual property rights;
 - (b) Inspection and supervision to detect goods showing signs of infringing intellectual property rights.
2. *Suspension of customs procedures for goods suspected of infringing intellectual property rights* means a measure taken at the request of an intellectual property right holder in order to collect information and evidence on the goods consignment in question so that the intellectual property right holder may exercise the right to request that the infringing act be dealt with and to request the application of provisional urgent measures, preventive measures and/or measures to secure enforcement of administrative penalties.
3. *Inspection and supervision to detect goods showing signs of infringing intellectual property rights* means a measure taken at the request of an intellectual property right holder in order to collect information for the exercise of the right to request suspension of customs procedures.
4. If any intellectual property counterfeit goods within the meaning of article 213 of this Law are found during the course of application of the measures stipulated in clauses 2 and 3 of this article, the customs office shall have the right and responsibility to apply administrative remedies to deal with such goods in accordance with articles 214 and 215 of this Law.

Article 217 *Obligations of applicants for measures to control intellectual property related imports and exports*

1. An applicant for application of a measure to control intellectual property related imports or exports shall have the following obligations:
 - (a) To prove that the applicant is an intellectual property right holder by producing the documents and evidence stipulated in clause 2 of article 203 of this Law;
 - (b) To supply information sufficient to identify goods suspected of infringing intellectual property rights or to detect goods showing signs of infringing intellectual property rights;
 - (c) To file a written request with the customs office and to pay fees and charges stipulated by law;
 - (d) To pay damages and other expenses incurred to persons subject to control measures in a case where the controlled goods are found not to have infringed industrial property rights.
2. In order to secure the performance of the obligation stipulated in sub-clause (d) of clause 1 of this article, an applicant shall deposit security in one of the following forms:
 - (a) A sum of money equal to twenty (20) per cent of the value of the goods consignment subject to the application of the measure of suspension of customs procedures, or at least twenty million (20,000,000) dong where it is impossible to value such goods;
 - (b) A deed of guarantee issued by a bank or other credit institution.

Article 218 *Procedures for application of the measure of suspension of customs procedures*



1. When an applicant for the suspension of customs procedures has fulfilled the obligations stipulated in article 217 of this Law, the customs office shall issue a decision suspending customs procedures with regard to the goods consignment in question.
2. The duration of suspension of customs procedures shall be ten (10) working days from the date of issuance of the suspension decision. Where the applicant has justifiable reasons, this duration may be extended but must not exceed twenty (20) working days, provided that the applicant deposits the security stipulated in clause 2 of article 217 of this Law.
3. Upon expiry of the duration stipulated in clause 2 of this article, if the applicant does not initiate civil proceedings and the customs office does not issue a decision accepting jurisdiction to deal with the case in accordance with administrative procedures as an administrative breach by the importer or exporter of the goods, then the customs office shall have the following responsibilities:
 - (a) To continue customs procedures for the goods consignment in question;
 - (b) To compel the applicant to compensate for all loss and damage caused to the owner of the goods consignment due to the unreasonable request for suspension of customs procedures, and to pay expenses for warehousing and preservation of goods as well as other expenses incurred by the customs office and any related body, organization or individual in accordance with the law on customs;
 - (c) To refund to the applicant the remaining security amount after the obligation to pay compensation and expenses stipulated in sub-clause (b) above has been fulfilled.

Article 219 *Inspection and supervision to detect goods showing signs of infringement of intellectual property rights*

Where an intellectual property right holder requests inspection and supervision to detect goods showing signs of infringement of intellectual property rights and the customs office then finds such a goods consignment, the customs office shall promptly notify the applicant thereof. If the applicant does not request the suspension of customs procedures with regard to the offending goods consignment and the customs office does not issue a decision on consideration of application of the administrative penalties stipulated in articles 214 and 215 of this Law within three working days from the date of notification, then the customs office must continue carrying out customs procedures for the goods consignment in question.

PART VI

Implementing Provisions

Article 220 *Transitional provisions*

1. Copyright and related rights protected pursuant to legal instruments which were effective before the effective date of this Law shall continue to be protected pursuant to this Law if they remain within the term of protection on the effective date of this Law.
2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, marks, appellations of origin of goods, layout designs or plant varieties which were filed with the competent bodies before the effective date of this Law shall continue to be processed in accordance with the provisions of the legal instruments effective at the time of filing of such applications.



3. All rights and obligations conferred by protection titles granted according to the provisions of law effective before the effective date of this Law and procedures for maintenance, renewal, amendment, licensing, ownership assignment and settlement of disputes relating to such protection titles shall be subject to the provisions of this Law, except for grounds for invalidation of protection titles which shall only be subject to the provisions of legal documents effective at the time of grant of such protection titles.
4. Trade secrets and trade names which existed and were protected pursuant to Decree No. 54-2000-ND-CP of the Government dated 3 October 2000 on protection of industrial property rights with respect to trade secrets, geographical indications and trade names and protection of rights to fight against unfair competition relating to industrial property shall continue to be protected under this Law.
5. From the effective date of this Law, geographical indications including those protected under the Decree mentioned in clause 4 of this article shall only be protected after registration in accordance with the provisions of this Law.

Article 221 *Effectiveness*

This Law shall be of full force and effect as of 1 July 2006.

Article 222 *Implementing guidelines*

The Government and the Supreme People's Court shall provide detailed regulations and guidelines for the implementation of this Law.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 8th session on 29 November 2005.

Chairman of the National Assembly

NGUYEN VAN AN

