

The Civil Law - Industrial Property

Part six
INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER

Chapter II INDUSTRIAL PROPERTY

SECTION 1 - GENERAL PROVISIONS

Article 780. Industrial Property

Industrial property is the ownership by individuals and legal persons of inventions, utility solutions, industrial designs, trademarks, and of the right to the use of appellations of origin and other objects which may be provided by law.

Article 781. Objects of Industrial Property Protected by the State

Industrial property subjects protected by the State include: inventions, utility solutions, industrial designs, trademarks, appellations of origin and other objects as per the law except those which are stipulated in Article 787 of this Code.

Article 782. Inventions

An invention is a technical concept that is distinguished by being a world-wide novelty in terms of technological development and by not being obvious. It is applicable to various social and economic fields.

Article 783. Utility Solutions

A utility solution is a technological solution that is new in terms of the present technological development in the world and that is applicable in various economic and social fields.

The State promotes all creative activities that lead to technological improvements and the rationalisation of production.

Article 784. Industrial Designs

An industrial design is a product shape that is formed by lines, three-dimensional forms and colours, or a combination thereof, and that has world-wide novelty and is used as an ornamental pattern for industrial or handicraft products.

Article 785. Trademarks

A trademark consists of the symbols that are used to distinguish goods or services of the same kind made by different producers. A trademark can be expressed by words, images or a combination thereof in one or several colours.

Article 786. The Appellations of Origin

The appellation of origin is a geographical name of a country or locality that is used to indicate the origin of the goods as being in that country or locality, provided that the goods have characteristics or qualities that reflect

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the specific and advantageous geographical conditions of a natural or human character or the combination of thereof.

Article 787. Objects of Industrial Property Not Protected by the State

The State shall not protect industrial property objects that are against the public interest or public order, or are contrary to the principles of humanity, or are otherwise not mentioned as being protected by the industrial property law.

SECTION 2 - THE ESTABLISHMENT OF INDUSTRIAL PROPERTY OWNERSHIP

Article 788. The Establishment of Industrial Property by Patents

Ownership of inventions, utility solutions, industrial designs, trademarks, and the appellations of origin are created on the basis of registration or patent issued by the competent state authority.

Ownership of other objects of industrial property shall be created pursuant to the provisions of law.

Article 789. The Right to Apply for Patents

1. The following persons are entitled to file applications for a protection title of their inventions, utility solutions, and industrial designs:
 - a. Inventors or co-inventors who create inventions, utility solutions, and industrial designs out of their own efforts and at their own expense;
 - b. Employers of employees who create inventions, utility solutions and industrial designs during the performance of their assigned duties unless the employers and employees have agreed otherwise;
 - c. Legal persons and individuals who hire inventors to carry out techno-scientific research or project implementation;
 - d. Legal persons and individuals who receive inventions, utility solutions or industrial designs pursuant to contracts or the law.
2. Individuals, legal persons and other subjects who legally conduct business are entitled to register their trademarks in order to protect them.
3. Legal persons and individuals who trade in specific goods that come from a locality that has the features stipulated in Article 786 of this Code are entitled to register the appellations of origin.

Article 790. Priority Rights

1. The priority right in respect of an application for patents or a registration of inventions, utility solutions, industrial designs, trademarks, the appellations of origin or other objects as per the law, shall be determined on the basis of the priority date.
2. The priority date shall be the date on which the application for patents is received by the competent state authority, or shall be determined according to the Conventions to which Vietnam has signed or joined.
3. In order to have a priority right determined by the conventions which the Socialist Republic of Vietnam has signed or joined, the applicant must indicate in the application his intention to have the priority right. The applicant must prove his priority right.

Article 791. The Term of Protection

The ownership of industrial property objects shall be protected during the period of validity of the issued

patents or certificates and may be extended pursuant to the provisions of the law.

Article 792. The Revocation of Patents

1. A patent or certificate may be revoked in any of the following circumstances:
 - a. If the objects of industrial property to be patented do not satisfy the requirements provided by law at the time of the issuance of the patent or certificate;
 - b. If the patent has been issued to a person who does not have the right to apply for it;
 - c. If there are other causes for revocation as provided for in the law.
2. When a patent is revoked the industrial property right under its protection shall be deemed not to have been created.

Article 793. The Suspension of a Patent's Validity

1. The validity of a patent or certificate shall be suspended in any of the following circumstances:
 - a. If the owner of the objects of industrial property does not pay the fee to maintain his protection title on time;
 - b. If the owner of industrial property rights for a trademark or the user of the appellation of origin ceases business activities;
 - c. If the owner of industrial property rights for a trademark fails to use the registered trademark or to transfer it to another person during the period required by law commencing with the moment when the registration took effect;
 - d. If there is any other cause as provided by law.
2. When the validity of a patent or certificate is suspended, the industrial ownership protected thereby shall be suspended from the moment of the suspension.

SECTION 3 - THE OWNERS OF THE OBJECTS OF INDUSTRIAL PROPERTY AND THE ORIGINATORS OF INVENTIONS, UTILITY SOLUTIONS AND INDUSTRIAL DESIGNS

Article 794. The Owners of the Objects of Industrial Property

Legal persons or individuals and other subjects to whom the protection titles for inventions, utility solutions, industrial designs, trademarks and other objects are granted or transferred to by the competent State authority, shall be the owners of such inventions, utility solutions, industrial designs, trademarks and other objects.

Article 795. The Persons who Have the Right to Use the Appellations of Origin

Legal persons or individuals and other subjects to whom the protection title for the appellation of origin is granted by the competent State authority, shall be the legitimate users of the authorised appellation of origin.

Article 796. The Rights of the Owners of the Objects of Industrial Property

1. The owners of inventions, utility solutions, industrial designs and trademarks shall have the following rights:
 - a. The exclusive right to use the patented or authorised industrial property;
 - b. The right to transfer the right to use the patented or authorised industrial property to other persons;
 - c. The right to demand that the competent state authority force the persons who violate their ownership to cease such violations and to pay compensation for the damages caused.
2. The ownership of inventions, utility solutions, industrial designs, and trademarks can be inherited or

transferred to other persons.

Article 797. The Right of Users of the Appellations of Origin

1. Authorised users of the appellations of origin shall have the following rights:
 - a. The right to place the authorised appellation of origin on their products;
 - b. The right to demand that the competent state authority force illegal users of such appellation of origin to cease their violations and to pay compensation for the damages caused.
2. The right to use the appellation of origin is not transferable to any one in any form.

Article 798. The Obligations of the Owners of the Patented Inventions, Utility Solutions, and Industrial Designs.

The owners of the patented inventions, utility solutions and industrial designs have the following obligations:

1. The obligation to pay remuneration to the inventors when the owners are not the inventors of the patented subjects, unless there is an agreement that states otherwise;
2. The obligation to pay fees to maintain the patents;
3. The obligation to use or to transfer the use right of the patented industrial property to another person subject to the provisions of Article 802 of this Code.

Article 799. The Inventors of Inventions, Utility Solutions and Industrial designs

1. The inventor of an invention, a utility solution or an industrial design is the person who creates an invention, utility solution, or industrial design.
2. The co-inventors of an invention, a utility solution or an industrial design are the persons who jointly create an invention, utility solution or industrial design.

Article 800. The Rights of the Inventors of Inventions, Utility Solutions, and Industrial Designs

1. The inventors of inventions, utility solutions and industrial designs shall have the following rights:
 - a. The right to have their names acknowledged in the patents of inventions, utility solutions, and industrial designs, and in other related scientific materials;
 - b. The right to receive remuneration from other persons who use the patented inventions, utility solutions, and industrial designs, unless the owners and inventors have agreed otherwise;
 - c. The right to demand that the courts and the competent state authorities deal with violations against the patented industrial property;
 - d. The right to receive the awards granted for the inventions, utility solutions and industrial designs of which they are the inventors.
2. The co-inventors of the patented inventions, utility solutions and industrial designs have the rights stipulated in Paragraph 1 of this Article.

SECTION 4 - THE RESTRICTED USE OF INDUSTRIAL PROPERTY

Article 801. The Rights of the Persons Who Use Inventions, Utility Solutions and Industrial Designs Prior to Patenting

Persons who have been using inventions, utility solutions and industrial designs before they are patented shall be entitled to continue using them, provided that such persons do not increase the quantity and scope of such use and do not transfer the patented industrial property objects to other individuals.

Article 802. Transferring the Right to Use Inventions, Utility Solutions and Industrial Designs According to

the Decision of the Competent State Authority

Upon application by persons who have the need to use the inventions, utility solutions and industrial designs, the competent State authority may order the owners thereof to transfer the right to use these inventions, utility solutions and industrial designs to such persons on the basis of reimbursement, if any of the following circumstances hold true:

1. The owners have failed to use the industrial property, or have used it in a manner not in accordance with the needs of the economic or social development of the country and without reasonable motivation;
2. The persons who need to use such inventions, utility solutions or industrial designs have negotiated with the owners in different ways and offered a reasonable price, but the latter still refuses to conclude a contract for the transfer of the right to use such objects;
3. The use of such industrial property is necessary to meet the needs of national defence, national security, health or other urgent needs of society.

Article 803. Using Inventions, Utility Solutions and Industrial Designs Without Royalty Payments or Application for Permission

During the period of validity of the patented inventions, utility solutions and industrial designs, any individuals or legal persons or other subjects are entitled to use patented objects of industrial property without being liable to pay remuneration, or make an application for permission from the owners if:

1. The use of such objects of industrial property is not for business purposes;
2. The circulation and use of the objects is after they have been brought into markets by the owners or by the persons who have the right of continuous use of thereof or by the transferee of these objects;
3. The use of these objects is on foreign transportation means which travel by transit through or temporarily enter into the territory of Vietnam provided that the use of the objects is only for maintaining the activities on such transportation means.

SECTION 5 - THE PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

Article 804. The Protection of Industrial Property Rights

1. Any person who uses the patented industrial property owned by another person during the term of protection without the latter's permission shall be deemed to be infringing industrial property rights except for the cases stipulated in Article 801 and 803 of this Code.
2. When industrial property rights are infringed, the owner shall have the rights stipulated in point "c" of Paragraph 1 of Article 796 of this Code.

Article 805. Infringements of industrial Property Rights

1. The infringements of property rights on the patented inventions and utility solutions pursuant to the provisions in Paragraph 1 of Article 804 of this Code shall include:
 - a. Manufacturing products by the inventions and utility solutions protected in Vietnam;
 - b. Using, importing, advertising and circulating products that are manufactured by inventions or utility solutions that have been patented in Vietnam;
 - c. The application of the solution that has been protected in Vietnam as an invention or a utility solution.
2. Infringements of industrial property rights on the patented industrial designs pursuant to the provisions stipulated in Paragraph 1 of Article 804 of this Code shall include:
 - a. The manufacturing of products by the industrial designs protected in Vietnam;
 - b. The importation, sale, advertising or use for business purposes of the products that are

manufactured by the industrial designs protected in Vietnam.

3. Infringements of the industrial property right on the protected trademarks pursuant to the provisions stipulated in Paragraph 1 of Article 804 of this Code shall include:
 - a. The placing of other persons' trademarks that have been registered in Vietnam, or similar trademarks, on one's products or packages;
 - b. The importation into or sale or advertising in Vietnamese markets of the products affixed with the trademarks that have been registered in Vietnam.