

GOVERNMENT

No. 63-CP

**SOCIALIST REPUBLIC OF
VIETNAM**

Independence – Freedom – Happiness

Hanoi, October 24th, 1996

(as amended 1 February 2001)

**DECREE
ON
INDUSTRIAL PROPERTY**

The Government

Pursuant to the Law on the Organization of the Government dated 30 September 1992;

Pursuant to the Civil Code dated 28 October 1995;

Pursuant to the Resolution issued by Legislature IX of the National Assembly at its eighth session on 28 October 1995;

On the proposal of the Minister of Science, Technology and Environment;

Decrees:

CHAPTER 1

General Provisions

Article 1 Objectives and Scope of Application

This Decree makes detailed provisions on industrial property in order to provide guidelines for the implementation of the provisions on industrial property rights in Chapter II and the provisions on transfer of industrial property rights in Chapter III of Part 6 of the Civil Code passed by the National Assembly of the Socialist Republic of Vietnam on 28 October 1995.

The provisions in this Decree shall be applicable only to inventions, utility solutions, industrial designs, trademarks and appellations of origin of goods and not to other objects of industrial property.

Article 2 Definitions and Terms

In this Decree, the following terms shall have the meanings ascribed to them hereunder:

1. Civil Code means the Civil Code of the Socialist Republic of Vietnam passed by the National Assembly of the Socialist Republic of Vietnam on 28 October 1995;

2. Paris Convention means the Convention on Protection of Industrial Property signed in Paris in 1883 as amended in Stockholm in 1967;
3. PCT Treaty means the Patent Co-operation Treaty signed in Washington in 1970 as amended in 1984;
4. Madrid Agreement means the Agreement on International Registration of Trademarks signed in Madrid in 1891 as amended in 1979;
5. Applicant means a person who files an application for a certificate of protection of an invention, utility solution, industrial design, trademark or appellation of origin of goods;
6. Certificate of protection means a certificate of protection of an invention, utility solution, industrial design, trademark or appellation of origin of goods;
7. Trademark includes service marks;
8. Collective trademark is a trademark used by a collective of individuals, legal entities or other entities, where the trademark is used independently by each member in accordance with the regulations provided by such collective;
- 8A. Affiliated trademarks means similar trademarks registered by the same entity for the purpose of using them for products or services which are of a same, similar or related kind; and identical trademarks registered by the same entity for the purpose of using them for similar or related products or services.
- 8B. Well-known trademark means a trademark which has been continuously used for prestigious goods so that such trademark has become widely known.
9. Author(s) of an invention, utility solution or industrial design means the person(s), who by his or her (or their) creative work, directly create(s) an invention, utility solution or industrial design;

Persons who provide technical and physical facilities or financial assistance or support for an author without taking part in the creation of an invention, utility solution or industrial design through creative work shall not be considered authors of an invention, utility solution or industrial design.

Article 3 Calculation of Time-Limits

The time-limits referred to in this Decree shall be determined in accordance with articles 158, 159, 160, 161 and 162 of the Civil Code.

CHAPTER 2

Objects of Industrial Property Protected by the State

Article 4 Inventions and Utility Solutions

1. A technical solution shall be recognized as new compared to the technical level of the world as stipulated in articles 782 and 783 of the Civil Code when it satisfies all of the following conditions:

(a) The technical solution stated in the application for a certificate of protection of an invention or utility solution is not the same as any solution which has been described in

any application for a certificate of protection of an invention or utility solution filed with the authorized body on an earlier priority date.

(b) Prior to the priority date stated in the application for a certificate of protection of an invention or utility solution, the technical solution described in the application has not been publicly disclosed inside and/or outside Vietnam by way of use or description in any form in the following information sources to an extent that a person of average professional knowledge in the relevant field may realize such solution:

- information sources relating to overseas inventions or utility solutions, calculated from the date of publication;
- other information sources in any information-containing objects (such as printed matters, film, photograph, magnetic tape, compact disc, optical disc, and so forth), calculated from the date on which such objects are first circulated;
- mass media (such as broadcast, transmission and television), calculated from the date of publication of the news;
- scientific papers, lectures, and so forth, if recorded by any means calculated from the date of presentation or lecture;
- exhibitions, calculated from the date of display of exhibits.

Any information shall be deemed not to be publicly disclosed whilst it is known to only a certain number of concerned persons.

A solution shall continue to be deemed to remain new in cases where it has been revealed, without the permission of the applicant, by other persons who learnt about such information within six months prior to the date on which the application for a certificate of protection of an invention or utility solution is filed.

2. A technical solution shall be recognized as creative as stipulated in article 782 of the Civil Code when that solution is the result of creative work; and, based on the technical level in the country and abroad as at the priority date stated in the application for a certificate of protection of an invention or utility solution, the solution does not obviously arise in the mind of a person of average professional knowledge in the relevant technical field.

3. A technical solution shall be recognized as capable of being applied as stipulated in articles 782 and 783 of the Civil Code when, on the basis of the nature of the solution as described in the application for a certificate of protection of an invention or utility solution, it may be implemented in current or future technical conditions and the results described in the application for a certificate of protection may be obtained.

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

- scientific intentions, principles and discoveries;
- methods and systems of economic organization and management;
- methods and systems of education, teaching and training;
- methods of training of domestic animals;
- language systems, systems of information, data classification and arrangement;

- designs and planning layouts for construction projects, projects of territorial planning and zoning;
- solutions for appearance of products which are aesthetic and not technical in nature;
- defined signs, schedules, rules and laws, symbols;
- computer software, designs and layout of chips, mathematical models and diagrams used for reference and similar forms;
- breeds of animal and seeds of plants;
- methods of disease prevention, diagnosis and treatment for human beings and animals;
- processes of a biological nature (except for microbiological processes) for production of plants or animals.

Article 5 Industrial Designs

1. An industrial design shall be recognized as new in the world as stipulated in article 784 of the Civil Code when it satisfies all of the following conditions:

(a) Being substantially different from any industrial design described in an application for a certificate of protection of an industrial design filed with the authority on an earlier priority date.

(b) Being substantially different from any similar industrial design published in any of the following information sources:

- information sources relating to the protection of industrial designs overseas, calculated from the date of publication;
- other information sources listed in article 4.1(b) of this Decree with relevant details applied as suitable for industrial designs.

(c) Prior to the priority date stated in the application for a certificate of protection, the industrial design described in the application has not been publicly disclosed inside and/or outside Vietnam to an extent that a person of average professional knowledge in the relevant field may implement such industrial design; disclosure may be in the form of use or description; information sources through which the industrial design is disclosed shall be the same as stipulated in (b) above.

For the purpose of this clause, two industrial designs shall not be considered substantially different if they are only different in the features of their external appearance which may not easily be recognized and memorized and which cannot be used to distinguish generally between those two industrial designs.

2. An industrial design may be used as a model for manufacturing handicrafts or industrial products as stipulated in article 784 of the Civil Code if products with the external appearance of the industrial design may be put into mass production by industrial or handicraft making methods.

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

- external appearance of a product which may be easily created by a person of average professional knowledge in the relevant field;

- external appearance which results naturally from the technical specifications of products or which only bears technical specifications;
- external appearance of civil or industrial construction works;
- appearance of a product which cannot be seen whilst in use;
- appearance of a product which only has an aesthetic value.

Article 6 Trademarks

1. A symbol used as a trademark shall be recognized as possessing distinctive characteristics as stipulated in article 785 of the Civil Code when it satisfies all of the following conditions:

- (a) Being created from one or more distinctive, recognizable elements or from elements which are combined into a distinctive or recognizable whole and not being one of the symbols provided for in clause 2 of this article.
- (b) Not being identical or similar to any extent that may cause confusion with any trademark of another person which is currently protected in Vietnam (including any trademark which is currently protected in accordance with an international treaty to which Vietnam has acceded).
- (c) Not being identical or similar to any extent that may cause confusion with any trademark which has been described in an application for a certificate of protection of a trademark filed with the authority on an earlier priority date (including an application in respect of a trademark filed in accordance with an international treaty to which Vietnam has acceded).
- (d) Not being identical or similar to any extent that may cause confusion with any trademark of another person in respect of which a certificate of protection has expired or been suspended for less than five years, except where the certificate of protection has been suspended for failure to use the trademark in accordance with article 28.2(c) of this Decree.
- (e) Not being identical or similar to any extent that may cause confusion with any trademark of another person deemed to be well-known (in accordance with article 6bis of the Paris Convention) or to any trademark of another person currently being widely used and recognized.
- (f) Not being identical or similar to any extent that may cause confusion with any protected trade name or with any protected geographical instruction (including appellation of origin of goods).
- (g) Not being identical to any industrial design which is protected or in respect of which an application for a certificate of protection has been filed on an earlier priority date.
- (h) Not being identical to a figure or character which is already under the copyright of another person, except where permission has been granted by such person.

2. The following signs shall not be protected by the State as trademarks:

- (a) Signs which do not possess distinctive characteristics, such as simple shapes and geometrical shapes, numerical figures, alphabetical letters, letters which cannot be pronounced as a word, or letters of foreign languages which are not commonly used, except where such signs have previously been widely used and recognized.

(b) Signs, conventional symbols, common figures or denominations of goods in any language which have been widely and regularly used and known by many people.

(c) Signs expressing time, place, manufacturing process, type, quantity, quality, nature, composition, purpose, or value and which are descriptive of products, services or origins of goods or services.

(d) Signs which mislead, confuse or deceive consumers as to the origin, nature, purpose, quality or value of goods or services.

(e) Signs which are identical or similar to official stamps of control, quality, warranty, and so forth, of Vietnam, foreign countries or international organizations.

(f) Signs, names (including photographs, names, pseudonyms or pen-names), shapes or symbols which are identical or similar to any extent that may cause confusion with the image of the national flag, national emblem, national leaders or heroes, geographical denominations, or organizations of Vietnam or foreign countries, except where permitted by relevant competent authorities or persons.

Article 7 Appellations of Origin of Goods

1. In order to be protected, an appellation of origin of goods must be the geographical name of the country or locality in which goods are manufactured; and such goods must bear typical characteristics or qualities due to the unique geographical conditions (including natural and human elements) of that country or locality.

If the above country or locality is not Vietnam or does not belong to Vietnam, the relevant appellation of origin of goods shall only be considered for protection in Vietnam if that appellation of origin of goods is under protection in the country or locality bearing such geographical name.

2. The following objects shall not be protected by the State as appellations of origin of goods:

(a) Instructions related to origin of goods not being geographical names (including symbolic signs of the country or locality in which such goods originated which are not geographical names of such country or locality).

(b) An appellation of origin of goods which has become the common name of goods and is no longer functioning as instructions related to the origin of such goods.

CHAPTER 3

Establishment of Industrial Property Rights

Article 8 Basis on Which Industrial Property Rights and Rights of Authors of Inventions, Utility Solutions and Industrial Designs Arise

1. Industrial property rights with respect to an invention, utility solution, industrial design, trademark or appellation of origin of goods in accordance with article 780 of the Civil Code and rights of authors of inventions, utility solutions or industrial designs in accordance with article 800 of the Civil Code shall only arise upon the issuance of a certificate of protection by the authorized body in accordance with the procedures provided for in this Chapter.

2. Industrial property rights with respect to a trademark in accordance with article 780 of the Civil Code may also arise upon the acceptance by the authorized State body of

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protection of a trademark which has been internationally registered in accordance with the Madrid Agreement.

3. Industrial property rights with respect to a well-known trademark shall arise upon a decision on recognition of the well-known trademark by the authorized State body.

Article 9 Certificate of Protection, Registration of Appellations of Origin of Goods, Acceptance of Protection of Internationally Registered Trademarks and Recognition of Well-Known Trademarks

1. A certificate of protection issued by the authorized State body is the sole certificate of the State evidencing the industrial property rights of the owner who is issued the certificate of protection or the rights of the author of an invention, utility solution or industrial design and certifying the degree of protection of the industrial property right.

Certificates of protection shall be valid throughout the Socialist Republic of Vietnam.

The Department of Industrial Property under the Ministry of Science, Technology and Environment shall be the above authorized State body.

2. Kinds of certificates of protection and duration of validity:

(a) A certificate of protection of an invention shall be the exclusive patent in respect of the invention, which shall take effect from the date of issuance of the certificate for a period of twenty (20) years calculated from the date of submission of the proper application.

(b) A certificate of protection of an utility solution shall be the exclusive patent in respect of the utility solution, which shall take effect from the date of issuance of the certificate for a period of ten (10) years calculated from the date of submission of the proper application.

(c) A certificate of protection of an industrial design shall be the exclusive patent in respect of the industrial design, which shall take effect from the date of issuance of the certificate for a period of five years calculated from the date of submission of the proper application and may be extended for two successive periods of five years each.

(d) A certificate of protection of a trademark of goods shall be the certificate of registration of the trademark of goods, which shall take effect from the date of issuance of the certificate for a period of ten (10) years calculated from the date of submission of the proper application and may be extended for successive periods of ten (10) years each.

(e) A certificate of protection of an appellation of origin of goods shall be the certificate of the right to use the appellation of origin of goods, which shall take effect for an indefinite period.

3. Decisions on acceptance of protection of appellations of origin of goods, internationally registered trademarks and well-known trademarks:

A decision on registration of an appellation of origin of goods, a decision on acceptance of protection of an internationally registered trademark or a decision on recognition of a well-known trademark issued by the authorized State body shall be the basis for evidencing the relevant appellation of origin of goods or trademark protected by the State and for determining the scope of protection of such object.

The Department of Industrial Property under the Ministry of Science, Technology and Environment shall be the above authorized State body.

Article 10 Duration of Protection; Provisional Rights of Owners of Inventions, Utility Solutions or Industrial Designs

1. Industrial property rights and rights of authors of inventions, utility solutions or industrial designs under a certificate of protection shall be protected by the State from the date of issuance of the certificate of protection to the date of expiry of the duration of validity or the date of termination of validity of the certificate of protection.

Industrial property rights with respect to trademarks under a certificate of international registration shall be protected by the State from the date of publication of the international registration in the Official Gazette of International Trademarks of the World Intellectual Property Organization to the date of expiry of the duration of validity of the international registration in accordance with the Madrid Agreement.

Industrial property rights with respect to a well-known trademark shall be protected for an indefinite period calculated from the date on which the trademark is recognized as a well-known trademark as stated in the decision on recognition of the well-known trademark.

An appellation of origin of goods shall be protected for an indefinite period calculated from the date on which the authorized State body issues a decision on registration of the appellation of origin of goods, except where factors arise which cause distinctive characteristics to no longer exist as stipulated in article 28.2(e) of this Decree.

2. During the period from the date of publication of the application for a certificate of protection of an invention, utility solution or industrial design in the Official Gazette of Industrial Property to the date of issuance of a certificate of protection, if any person commences to use an invention, utility solution or industrial design which is identical to the invention, utility solution or industrial design stated in the application, the applicant has the right to notify that user of his or her submission of the application. If the user of the invention, utility solution or industrial design continues his or her use notwithstanding notice having been given, after a certificate of protection has been issued, the owner of the certificate of protection has the right to request that the person using the invention, utility solution or industrial design make compensation equivalent to the payment for the transfer of the right to use the relevant object of industrial property (licence) to other persons for a similar period.

Article 11 Application for Certificate of Protection

1. An application for a certificate of protection shall be a package of documents representing the request of the applicant for the issuance of a certificate of protection of an invention, utility solution, industrial design, trademark or appellation of origin of goods with the respective contents and scope of protection or the request for registration of an appellation of origin of goods or for recognition of a well-known trademark.

2. An application for a certificate of protection must ensure uniformity, that is, each application shall be for a certificate of protection of one object or of several objects of the same kind which are used for the same purpose.

The uniformity of objects shall be understood as follows:

Inventions or utility solutions are uniform when they are closely related with respect to the realization of a uniform creative intention.

Industrial designs are uniform when they are designs for different products used jointly in a set of products or they are alternative expressions of the same industrial design.

An application for a certification of protection may include various products or services bearing the same trademark.

3. An application for a certification of protection must satisfy the requirements in relation to form and substance as provided for by the Ministry of Science, Technology and Environment.

Article 12 Language

An application for a certificate of protection and all written communications between the applicant and the Department of Industrial Property must be in Vietnamese. Any documents in other languages shall only be used for purposes of comparison, reference or examination.

Article 13 Conversion from Application for Certificate of Protection of Invention to Application for Certificate of Protection of Utility Solution and vice versa

1. Within the period prior to completion of the verification of contents, the application for a certificate of protection of an invention may, at the request of the applicant, be converted to an application for a certificate of protection of an utility solution and vice versa. All data relating to the date of submission or the priority date of the application shall be determined pursuant to the application prior to the conversion. The applicant must pay a fee for application conversion.

2. Within a time-limit of three months calculated from the date of announcement of refusal to issue an exclusive patent, the application for a certificate of protection of an invention may, at the request of the applicant, be converted to an application for a certificate of protection of an utility solution. All data relating to the date of submission or the priority date of the application shall be unchanged. If the application for a certificate of protection of an invention is so converted, the application and verification fees paid shall not be refunded and the applicant must pay a fee for application conversion.

Article 14 Right to Apply for Certificate of Protection

The right to apply for a certificate of protection stipulated in article 789 of the Civil Code shall be provided for in detail as follows:

1. The right to apply for a certificate of protection of an invention, utility solution or industrial design:

(a) In the case of an invention, utility solution or industrial design other than the cases stipulated in (b) and (c) of this clause, the right to apply for a certificate of protection shall belong to the author (co-authors) or the beneficiary of the author.

(b) When an invention, utility solution or industrial design is created by the author during the performance of a task assigned by an organization of which the author is a member or is created by the author substantially by the use of funds or physical facilities provided by an organization, the right to apply for a certificate of protection shall belong to the organization assigning the task to or providing the funds or physical facilities for the author.

(c) In the case of an invention, utility solution or industrial design which is created by the author during the implementation of a hire contract with an organization or individual, the right to apply for a certificate of protection shall belong to the organization or individual signing the hire contract with the author, unless otherwise agreed under the contract.

(d) The person having the right to apply for a certificate of protection of an invention, utility solution or industrial design as stipulated in (a), (b) and (c) of this clause may, on the basis of a contract for the transfer of the right, transfer to an individual, legal entity or other subject the right to apply, including in cases where an application has already been filed.

2. The right to apply for a certificate of protection of a trademark:

(a) An individual, legal entity or other subject lawfully engaged in production activities has the right to apply for a certificate of protection of a trademark for the products which he, she or it manufactures or will manufacture.

(b) An individual, legal entity or other subject lawfully engaged in service activities has the right to apply for a certificate of protection of a trademark for the services which he, she or it renders or will render.

(c) An individual, legal entity or other subject lawfully engaged in commercial activities shall have the right to apply for a certificate of protection of a trademark for the products marketed by him, her or it but manufactured by another person provided that the manufacturer does not use that trademark for those products and does not object to such application.

(d) In the case of a collective trademark, the right to apply for a certificate of protection belongs to the individual or legal entity representing the collective of individuals, legal entities or other subjects who or which all comply with the regulations on use of the relevant trademark.

(e) The right to file an application, including an application which has already been filed, may be transferred as in the case of inventions, utility solutions or industrial designs.

3. The right to apply for a certificate of protection of an appellation of origin of goods:

(a) An individual, legal entity or other subject engaged in the production or business of products having the distinctive characteristics or qualities of a country or place bearing a geographical name which satisfy the provisions of article 7 of this Decree shall have the right to apply for a certificate of protection of an appellation of origin of goods for his, her or its products.

(b) A foreign individual or legal entity being the owner of a certificate of protection of an appellation of origin of goods issued by a foreign country shall have the right to apply for a certificate of the right to use the appellation of origin of goods for his, her or its products in the market of Vietnam.

(c) The right to apply for a certificate of the right to use an appellation of origin of goods is non-transferable.

(d) All organizations and individuals engaged in business activities within the territory bearing the geographical name corresponding to an appellation of origin of goods and administrative bodies responsible for management of the territory bearing the geographical name corresponding to an appellation of origin of goods shall be entitled to submit an application for registration of the appellation of origin of goods.

Article 15 Exercise of Right to Apply for Certificate of Protection

1. For the purpose of enjoying industrial property rights, entities having the right to file an application as stipulated in article 14 of this Decree shall file an application for a certificate of protection with the Department of Industrial Property. The application shall be verified by the Department of Industrial Property in accordance with the order and

procedures provided for in this Chapter. A certificate of protection shall be issued on the basis of the results of the verification of the application for a certification of protection. The scope, contents and duration of the relevant industrial property rights shall be stated in the issued certificate of protection.

2. A Vietnamese individual, legal entity or other subject may directly file an application for a certificate of protection and carry out the related procedures or may authorize an industrial property representative service organization to do so.

3. An individual or legal entity of a country which is a member of the Paris Convention or of a country which has signed a protection agreement with Vietnam or which accepts the principle of reciprocity in relation to industrial property protection may exercise the right to apply for a certificate of protection and carry out the related procedures as follows:

(a) A foreign individual permanently residing in Vietnam or a foreign entity having a legal representative or an establishment actually engaged in production or business activities in Vietnam may directly file an application for a certificate of protection and carry out the related procedures or may authorize an industrial property representative service organization to do so.

(b) A foreign individual not permanently residing in Vietnam or a foreign entity not having a legal representative or an establishment actually engaged in production or business activities in Vietnam may only file an application for a certificate of protection and carry out the related procedures through an authorized industrial property representative service organization.

4. The applicant must ensure the truthfulness of the information relating to the right to apply for a certificate of protection, to the applicant and to the author as stated in the application. Upon the cancellation of validity of a certificate of protection due to the above information being incorrect, the owner of the certificate of protection shall be liable for any consequences of use of the right.

Article 16 Principle of Submission of First Application

1. Where more than one entity files an application for a certificate of protection in respect of the same invention, utility solution, industrial design or trademark used for products or services of the same kind, a certificate of protection, if issued, shall be issued to the person who is the first to file an application.

2. Where more than one entity files an application for a certificate of protection in respect of the same invention, utility solution or industrial design and those applications are under the same preferential conditions, the Department of Industrial Property shall request that the entities jointly file one application in their names and a certificate of protection, if issued, shall be issued to those entities as co-owners of the certificate of protection. If any of those applicants disagrees, a certificate of protection shall not be issued.

3. If, for one utility solution, there is one or more applications for an exclusive patent in respect of an invention and one or more applications for an exclusive patent, and if the above applications have the same preferential conditions, the Department of Industrial Property shall request the applicants to agree on a form of protection and merge their applications as stipulated in clause 2 of this article.

4. Where more than one entity files an application for a certificate of protection in respect of the same trademark and if the applications of those entities have the same preferential conditions, the Department of Industrial Property shall request that those entities agree amongst themselves that only one entity shall continue to carry out the application procedures and that the other entities shall withdraw their applications on

reasonable conditions. If the above applicants fail to reach an agreement, all applications for a certificate of protection shall be rejected.

5. Where more than one entity files an application for a certificate of protection in respect of the same appellation of origin of goods, when the registration of the appellation of origin of goods is made, all those entities shall be issued a certificate of the right to use the appellation of origin of goods.

Article 17 Preferential Rights

1. An applicant filing an application for a certificate of protection of an invention, utility solution, industrial design or trademark may request to enjoy the preferential right on the basis of the earlier filing of an application for a certificate of protection in respect of the same object in another country or on the basis of display at an international exhibition officially held, or recognized as officially held, in Vietnam or another country provided that:

(a) The other country in which the application has been earlier filed or the exhibition has been held is a member of the Paris Convention or signs with Vietnam a bilateral agreement providing for preferential rights or agrees with Vietnam to introduce the principle of reciprocity of preferential rights;

(b) The applicant is a citizen, resident or person having an establishment actually engaged in production or business activities in a country which satisfies the conditions stated in (a) of this clause;

(c) The application for a certificate of protection of an invention, utility solution, industrial design or trademark in Vietnam is filed within the time-limit provided for in clause 2 of this article.

2. Time-limits for submission of an application for a certificate of protection in order to enjoy preferential rights shall be provided for as follows:

(a) If an applicant requests preferential rights in accordance with the Paris Convention, the time-limit for submission of an application for a certificate of protection in Vietnam shall be twelve (12) months calculated from the date on which the first application is filed in the case of an application for a certificate of protection of an invention or utility solution, six months calculated from the date on which the first application is filed in the case of an application for a certificate of protection of an industrial design and an application for a certificate of protection of a trademark, or six months calculated from the date on which an object is displayed at an exhibition in the case of an application for a certificate of protection of an invention, utility solution, industrial design or trademark.

(b) If an application for a certificate of protection of an invention or utility solution is filed in accordance with the PCT Treaty, the above time-limit shall be twenty one (21) months in the case of an international application in which Vietnam is designated, or thirty one (31) months in the case of an international application in which Vietnam is selected if such selection is made within a time-limit of nineteen (19) months calculated from the date on which the first application is filed.

(c) If preferential rights are required in accordance with a bilateral agreement or the principle of reciprocity, the time-limit for submission of an application for a certificate of protection shall be in compliance with such agreement.

3. An application for a certificate of protection for the purpose of enjoyment of preferential rights shall have the relevant priority date being the date on which the first application has been filed or the date on which the object has been displayed at an exhibition or the date provided for in the bilateral agreement.

4. In order to enjoy preferential rights, an applicant must refer to the international treaty which is the basis of such preferential rights, pay a fee for application for preferential rights, and submit a copy of the first application certified by the body receiving the first application or certificate of exhibition within three months from the date on which the application for a certificate of protection is filed. If an applicant fails to submit the above documents within such time-limit, the application for preferential rights shall not be considered.

5. If an application for a certificate of protection requests preferential rights on the basis of various dates, the calculation of the time-limit from the date of priority shall be calculated on the basis of the earliest priority date.

6. An applicant may withdraw his or her application for preferential rights in order to delay the announcement of the application for a certificate of protection.

Article 18 Verification of Application for Certificate of Protection

1. An application for a certificate of protection in respect of industrial property, including international applications in accordance with the PCT Treaty, received by the Department of Industrial Property shall be verified with respect to form by the Department of Industrial Property.

The purpose of the verification of form of applications is to check whether the applications satisfy the requirements for a proper application; and to determine the dates of submission of applications, the number of proper applications and the priority date where applications are considered proper.

2. All applications for a certificate of protection which are considered to be proper shall be published in the Official Gazette of Industrial Property by the Department of Industrial Property.

3. The Department of Industrial Property shall verify the contents of an application for a certificate of protection of a trademark, industrial design and appellation of origin of goods where the application has been considered proper and the applicant has paid a fee for verification of contents as stipulated; as well as the contents of an application for international registration of a trademark in accordance with the Madrid Agreement.

Verification of the contents of an application for a certificate of protection of an invention or utility solution shall only be conducted in cases where an application has been considered proper and at the request of the applicant or a third person provided that the request for verification of the contents of an application is submitted to the Department of Industrial Property within the stipulated time-limit.

The purpose of verification of the contents of an application is to evaluate the possibility of protection of the object stated in the application in accordance with the standards of protection and to determine the relevant scope (volume) of protection.

4. The procedures and time-limit for verification of the form, publication, verification of the contents of an application for a certificate of protection shall be provided for by the Minister of Science, Technology and Environment.

Article 19 Withdrawal of Application for Certificate of Protection

1. Prior to a decision on issuance or non-issuance of a certificate of protection being made, the applicant shall, at any time, have the right to withdraw his or her application for a certificate of protection upon giving a written declaration to the Department of Industrial Property.

If an applicant gives a declaration on withdrawal of his or her application for a certificate

of protection through an industrial property representation service organization, the authorization to withdraw the application must be clearly stated in the power of attorney.

2. From the point of time at which the applicant declares to withdraw his or her application for a certificate of protection, all further procedures related to the application shall be terminated; all fees paid in relation to further work shall be refunded to the applicant.

3. An application for a certificate of protection of an invention, utility solution or industrial design which is withdrawn or considered to be withdrawn prior to publication or an application for a certificate of protection of a trademark which is withdrawn or considered to be withdrawn shall all be deemed not to have been filed with the Department of Industrial Property.

Article 20 Right of Third Persons to Provide Opinion on Issuance or Non-Issuance of Certificate of Protection

During the time-limit for verification of the contents of an application for a certificate of protection, any third person shall have the right to provide his or her opinion on whether a certificate of protection should be issued or not in respect of the applications published in the Official Gazette of Industrial Property. In the event that a third person provides his or her opinion against the issuance of a certificate of protection, such person must provide his or her reasons therefor together with documents or references evidencing those reasons.

The opinion of the third person must be made in writing and provided to the Department of Industrial Property and the person providing the opinion shall not be liable for payment of any fee as stipulated.

Article 21 Right to Request Expert Opinion

For the purpose of ensuring that the issuance of a certificate of protection satisfies the standards provided for by law, during the process of verification of an application for a certificate of protection, the Department of Industrial Property has the right to request the opinion of specialized bodies and experts working in relevant fields. The bodies or experts requested by the Department of Industrial Property to provide opinions must exercise the obligation truthfully and objectively and shall be liable for their opinion.

Bodies or experts requested by the Department of Industrial Property to provide opinions shall be entitled to remuneration therefor; the rate of remuneration shall depend on the volume and quality of the opinion but shall not exceed forty (40) per cent of the fee for verification of the contents of the relevant object.

Article 22 Request for References

1. From the date on which an application is considered to be proper, the applicant for a certificate of protection of an invention or utility solution shall have the right to request the Department of Industrial Property for references in respect of the technical status prior to the priority date. The person requesting references shall pay a fee for references as stipulated.

2. Within three months from the date of receipt of the request for reference, the Department of Industrial Property shall deliver the references to the requesting person.

Article 23 Decision to Issue Certificate of Protection

1. If any invention, utility solution, industrial design or trademark satisfies the standards of protection and the applicant has paid fees as stipulated, the Department of Industrial

Property shall issue a decision on the issuance of a certificate of protection, which clearly states the name and address of the applicant to be issued a certificate of protection, the number of the application for a certificate of protection, the date of receipt of the application, and the relevant priority date; the name of the industrial property representation service organization; the full name of the authors of the invention, utility solution or industrial design; the name of the protected object; the name and number of the certificate of protection; the scope (volume) of protection; the period of protection or decision on acceptance of protection of a trademark being internationally registered in accordance with the Madrid Agreement.

2. If any appellation of origin of goods satisfies the standards of protection and the applicant has paid fees as stipulated, the Department of Industrial Property shall issue a decision on registration of the appellation of origin of goods, which clearly states the name and address of the applicant for protection of the appellation of origin of goods, the number of the application for a certificate of protection of the appellation of origin of goods, the date of receipt of the application; the name of the industrial property representation service organization; the appellation of origin of goods and relevant territories; the list of products bearing the appellation of origin of goods, the summary of specifications of qualities of products bearing the appellation of origin of goods; the list (including names and addresses) of individuals and organizations entitled to use the appellation of origin of goods; the registration number of the appellation of origin of goods.

3. If any applicant for a certificate of protection of an appellation of origin of goods satisfies the standards required for use of the appellation of origin of goods which has been registered, the Department of Industrial Property shall issue a decision on the issuance of a certificate of the right to use the appellation of origin of goods, which clearly states the name and address of the applicant to be issued with the certificate of the right to use the appellation of origin of goods; the number of the application for a certificate of protection of the appellation of origin of goods, the date of receipt of the application; the name of the industrial property representation service organization; the products bearing the appellation of origin of goods manufactured by the person who has been issued the certificate; the appellation of origin of goods, the registration number, the number of the certificate.

Article 24 Issuance of Certified True Copies of Certificate of Protection and Copies of Related Documents

The Department of Industrial Property may, at the request of individuals, legal entities and other subjects, issue to co-owners certified true copies of a certificate of protection, copies of the first application for a certificate of protection for the purpose of enjoyment of preferential rights overseas and copies of other documents, except documents which are considered confidential or not yet announced.

The Department of Industrial Property may, at the request of the owner of a certificate, issue certified true copies of the certificate of protection to the owner of the certificate if there are proper reasons therefor.

Persons requesting certified true copies or copies must pay a fee as stipulated.

Article 25 Notice of Refusal of Issuance of Certificate of Protection

In cases other than the cases provided for in clauses 1, 2 and 3 of article 23 of this Decree, the Department of Industrial Property shall issue a notice of refusal to issue a certificate of protection in which the reasons therefor shall be expressly stated. This notice shall be given to the applicants and persons who request verification of the contents of an invention or utility solution (where the issuance of a certificate of protection of an invention or utility solution is refused).

Article 26 Contents of Certificates of Protection; Registrations and Certifications of Protection

1. The contents of a certificate of protection shall be determined in accordance with the decision on issuance of a certificate of protection. In addition to the above information stated in the decision, the certificate must fully reflect the nature and the scope (volume) of protection of the protected right and other necessary information relating thereto.
2. Certificates of protection shall be recorded in the National Registration Book of Industrial Property (National Register).
3. Certificates of protection shall be given to applicants. If the applicant is a collective, only the first member in the list of members of the collective shall be given the certificate of protection and the name of that member shall be recorded in the National Registration Book of Industrial Property referred to in clause 2 of this article. The Department of Industrial Property may, at the request of any other member of the collective of which the applicant is a member, issue certified true copies, if that member pays a fee as stipulated.

Article 27 Complaints Regarding Decisions Relating to Creation of Industrial Property Rights

1. The following persons shall have the right to lodge complaints regarding decisions or notices of the Department of Industrial Property relating to the creation of industrial property rights:

(a) First complaints:

Applicants submitting an application for a certificate of protection shall have the right to lodge complaints with the Director of the Department of Industrial Property in relation to the refusal to receive the application and the refusal to issue a certificate of protection.

Applicants submitting an application for international registration of a trademark under the Madrid Agreement shall have the right to lodge complaints with the Director of the Department of Industrial Property in relation to the refusal of protection in Vietnam.

Applicants submitting an application for recognition of a well-known trademark shall have the right to lodge complaints with the Director of the Department of Industrial Property in relation to the refusal to recognize a well-known trademark.

Any third person who has rights and interests directly relating to the issuance of a certificate of protection, the acceptance to protect an internationally registered trademark under the Madrid Agreement or the recognition of a well-known trademark shall have the right to lodge a complaint with the Director of the Department of Industrial Property in relation to such matter.

(b) Second complaints and legal proceedings:

Where the complainant submitting the first complaint disagrees with the decision on resolution of the complaint by the Director of the Department of Industrial Property, he or she shall have the right to file a complaint (namely, the second complaint) with the Minister of Science, Technology and Environment or to initiate legal action in accordance with administrative legal proceedings.

2. Complaints must be made in writing and must clearly indicate the name (full name) and address of the complainant; the number, signing date and contents of the decision or notice which is the subject of complaint; the number of the related application for a certificate of protection; the name of the object for protection referred to in the

application; the contents of and the arguments and references evidencing the complaint; and a detailed proposal in relation to correction or cancellation of the decision or related conclusions.

3. Limitation periods for lodging first complaints shall be:

- Ninety (90) days calculated from the date on which the person entitled to lodge a complaint receives or is aware of a notice of refusal referred to in clause 1(a) of this article; or
- Five years calculated from the date of effectiveness of the certificate of protection or international registration and during the duration of protection of industrial property rights with respect to a well-known trademark; in the case of creation of an industrial property right due to an unhealthy motive of the person requesting the creation, the limitation period for lodging a complaint shall be the whole period of effectiveness of the certificate of protection or international registration.

The limitation period for lodging second complaints shall be thirty (30) days calculated from the date of expiry of the time-limit for resolution of the complaint as stipulated in clause 4 of this article in cases where the first complaint has not been resolved, or calculated from the date on which the person authorized to receive second complaints receives or is aware of the decision on resolution of the first complaint.

Where an event of force majeure or other objective interference prevents a complainant from exercising the right to lodge a complaint within the limitation period, the limitation period for lodging a complaint shall exclude the duration of such interference.

4. The time-limits for resolution of first complaints and second complaints shall be thirty (30) days and forty five (45) days respectively, calculated from the date of acceptance to resolve the complaint. In complex cases, the time-limits for resolution of first complaints and second complaints may be extended to forty five (45) days and sixty (60) days respectively, calculated from the date of acceptance to resolve the complaint. The period for amendment or addition to a complaint file shall not be included in the above time-limit.

Complaints shall be dealt with in accordance with the order and procedures stipulated in the Law on Complaints and Denunciations. The complainant must pay a fee for the complaint as stipulated.

Article 28 Suspension of Validity of Certificate of Protection

1. Any third person shall have the right to file an application with the Department of Industrial Property to request suspension of the validity of a certificate of protection for the reasons referred to in clause 2 of this article.

The application for suspension of validity of a certificate of protection shall be resolved in accordance with the procedures for resolution of complaints provided for in clauses 2, 3 and 4 of article 27 of this Decree.

If consideration of an application for suspension of validity of a certificate of protection confirms that any of the circumstances referred to in clause 2 of this article have arisen, the Director of the Department of Industrial Property shall issue a decision to suspend the whole or part of the validity of a certificate of protection and shall publish such decision in the Official Gazette of Industrial Property within two months calculated from the date of issuance of the decision.

2. The validity of a certificate of protection shall be suspended upon the occurrence of any of the following circumstances:

(a) Where the owner of a certificate of protection declares to surrender the rights granted under the relevant certificate of protection; in this case, the validity of the certificate of protection shall be suspended from the date on which the surrender thereof is declared.

(b) Where the owner of a certificate of protection fails to pay in a timely manner the fee required to maintain the validity of the certificate of protection; in this case, the validity of the certificate of protection shall be suspended from the commencement of the first year of validity for which the fee required for maintaining validity is not paid.

(c) Where the owner of a certificate of registration of a trademark or a certificate of use of an appellation of origin of goods does not use the trademark or appellation of origin of goods without any proper reason in five successive years prior to the date on which the request for suspension of validity is given; in this case, the validity of the certificate of registration of a trademark or the certificate of use of an appellation of origin of goods shall be suspended from the first day after the above time-limit of five years.

(d) Where the owner of a certificate of registration of a trademark or a certificate of the right to use an appellation of origin of goods no longer exists or ceases operation without having a legal successor; in this case, the validity of the certificate shall be suspended from the termination of operation or existence of the owner of the certificate.

(e) Where geographical factors which create distinctive characteristics have been changed so that those distinctive characteristics no longer exist; in this case, the validity of both the certificate of the right to use an appellation of origin of goods and the decision on registration of the appellation of origin of goods shall be suspended on the same date with the decision of the Department of Industrial Property.

(f) Where the owner of the certificate of the right to use an appellation of origin of goods does not have the capacity to exercise the obligations provided for in article 47.2 of this Decree.

Article 29 Cancellation of Validity of Certificate of Protection

1. Any third person shall have the right to file an application with the Department of Industrial Property to request the cancellation of validity of a certificate of protection for the reason that the issued certificate of protection is not in accordance with the provisions in clause 2 of this article.

The application for cancellation of validity of the certificate of protection shall be resolved in accordance with the procedures for resolution of complaints provided for in clauses 2, 3 and 4 of article 27 of this Decree.

If consideration of the application for cancellation of validity of a certificate of protection indicates that the issued certificate of protection is not in accordance with law, the Director of the Department of Industrial Property shall issue a decision to cancel the whole or part of the validity of a certificate of protection and shall publish such decision in the Official Gazette of Industrial Property within two months calculated from the date of issuance of the decision.

2. The validity of a certificate of protection shall be fully cancelled on the basis that the issued certificate of protection is not in accordance with the law in force at the time of issuance of the certificate of protection for the following reasons:

(a) The person being issued a certificate of protection does not have the right to apply for a certificate of protection and has not been assigned such right by the person who has the right to apply for a certificate of protection.

(b) The right to apply for a certificate of protection of an invention, utility solution or industrial design belongs to various individuals, legal entities or other entities but one of them disagrees, or several disagree, with the application for a certificate of protection.

(c) The name of the author recorded in the certificate of protection of an invention, utility solution or industrial design is incorrect due to a deliberate act of the applicant.

(d) The object being protected fails to satisfy the standards of protection.

3. The validity of a certificate of protection shall be partly cancelled on the basis of the relevant part which fails to satisfy the standards of protection.

4. Upon cancellation, the validity of the cancelled part shall be considered not to have arisen.

Article 30 Extension of Validity of Certificate of Protection of Industrial Design and Trademark

1. The validity of an exclusive patent in respect of an industrial design or certificate of registration of a trademark may be extended at the request of the owner of the certificate.

2. The Minister of Science, Technology and Environment shall stipulate procedures for extension of the validity of certificates of protection.

Article 31 Official Gazette of Industrial Property

1. The Official Gazette of Industrial Property published by the Department of Industrial Property shall be a legal instrument to announce information relating to the establishment, transfer, amendment, suspension or cancellation of industrial property rights and the contents and scope of protection of those rights.

2. The main information published in the Official Gazette of Industrial Property shall include information relating to the following:

(a) Applications for a certificate of protection are considered to be proper;

(b) Certificates of protection which have been issued and registered and trademarks which are protected in Vietnam through international registration in accordance with the Madrid Agreement or other international treaties to which Vietnam has acceded;

(c) Decisions on amendment, suspension, cancellation or extension of validity of issued certificates of protection;

(d) Decisions on registration of licensing contracts and decisions on compulsory licensing;

(e) Decisions on registration of contracts for transfer of rights with respect to objects of industrial property;

(f) Decisions on issuance, withdrawal and amendment of contents of operating licences of industrial property representation service individuals or organizations;

(g) New legal instruments and amendments of and additions to existing legal instruments relating to industrial property;

(h) Other necessary information relating to the protection of industrial property rights.

Article 32 Fees

1. Any individual, legal entity or other entity carrying out the procedures for establishment, maintenance, suspension, extension, amendment or transfer of industrial property rights at the Department of Industrial Property and the procedures for filing complaints in relation to industrial property with authorized bodies shall be liable for payment of charges and fees to the body which conducts the relevant works as stipulated in this article.

The Department of Industrial Property and authorized bodies referred to in the above paragraph shall have the obligation to collect and pay related charges and fees in full, on time and in accordance with the correct procedures into the State Budget in accordance with State provisions on charges and fees.

Bodies collecting charges and fees shall be entitled to use part of the collected fees in accordance with State provisions on charges and fees in order to improve professional and specialized capacity and to encourage people directly engaged in revenue-earning activities.

2. The Ministry of Finance shall, in co-ordination with the Ministry of Science, Technology and Environment, provide items (contents) and rates of charges or fees applicable to each item on the basis of ensuring adequate costs required for related works in accordance with the prevailing situation and international practice.

Where fees have been paid but the relevant works have not be fulfilled due to the absence of the circumstances in which the works must be fulfilled or the fault of the body which has the obligation to fulfil such works, such fees shall be refunded to the payer and the refund must be certified by the payer or recorded in a payment voucher.

CHAPTER 4

Owners of Objects of Industrial Property and Rights and Obligations of Owners of Objects of Industrial Property

Article 33 Owners of Objects of Industrial Property

Owners of objects of industrial property shall include the following:

1. Entities having been issued a certificate of protection;
2. Owners of the international registration of a trademark in accordance with the Madrid Agreement which is accepted for protection in Vietnam; entities possessing a trademark which is recognized as a well-known trademark;
3. Individuals, legal entities or other entities having been legally transferred ownership rights with respect to an invention, utility solution, industrial design or trademark.

Article 34 Use of Objects of Industrial Property

The use of an object of industrial property under the rights of the owner of the object of industrial property provided for in article 796.1(a) and article 797.1(a) of the Civil Code shall be the exercise of one or several of the following acts with respect to the protected object for business purposes:

1. In the case of an invention or utility solution:
 - to manufacture a protected product;

- to introduce a protected process;
- to exploit a protected product;
- to put into circulation; to advertise, offer and store for sale a protected product or a product manufactured in accordance with a protected process;
- to import a protected product or a product manufactured in accordance with a protected process.

2. In the case of an industrial design:

- to manufacture;
- to put into circulation; to advertise, offer and store for sale;
- to import;

a product having an external appearance which is protected as an industrial design.

3. In the case of a trademark and appellation of origin of goods:

- to attach a protected trademark or appellation of origin of goods to commodities, packaging of commodities, means of service, documents used for transactions in business activities;
- to put into circulation; to advertise, offer and store for sale commodities bearing the protected trademark or appellation of origin of goods;
- to import commodities bearing a protected trademark or appellation of origin of goods.

Article 35 Right to Transfer Right to Use Objects of Industrial Property

1. Pursuant to article 796.1(b) of the Civil Code and the provisions in this article, the owner of the industrial property right with respect to an invention, utility solution, industrial design or trademark shall have the right to transfer part or all of the right to use the object of industrial property to an individual, legal entity or other entity.

The owner of a certificate of the right to use an appellation of origin of goods shall not be permitted to transfer the right to use such appellation of origin of goods.

2. The transfer of the right to use an object of industrial property must be implemented under a written contract (a licensing contract). A licensing contract shall only be valid upon registration with the Department of Industrial Property as stipulated in article 42 of this Decree.

Article 36 Right of Third Person to Request Breach of Industrial Property Rights be Dealt With

1. Pursuant to article 796.1(c) of the Civil Code, the owner of an object of industrial property shall have the right to request the authorized State body to deal with or to initiate an action against a third person who has used his or her object of industrial property in cases other than those provided for in articles 50, 51 and 52 of this Decree and shall have the right to require the person in breach to cease the use and to compensate for any damage.

Prior to making a request that a breach be dealt with or action be taken in respect thereof, the owner of an object of industrial property shall have the right to notify the person in breach that the object of industrial property is under his or her ownership and to require the person in breach to cease the breach.

2. The owner of an object of industrial property being an invention, utility solution or industrial design shall have the right to initiate an action before a court having jurisdiction against persons who fail to pay compensation to the owner of the object of industrial property as stipulated in article 10.2 of this Decree.

3. The owner of an object of industrial property may request that breaches be dealt with or action be taken against breaches or may authorize another person to do so as stipulated in clauses 1 and 2 of this article.

Article 37 Transfer of Ownership for Purpose of Inheritance or Surrender of Industrial Property Rights

1. The transfer for the purpose of inheritance or surrender of ownership with respect to objects of industrial property in accordance with article 796.2 of the Civil Code must comply with the provisions in this Decree.

2. Only one individual, legal entity or other entity shall be entitled to inherit the ownership rights with respect to a trademark. The person entitled to inherit the ownership rights with respect to a trademark must satisfy all the same conditions as those provided in respect of the right to apply for a certificate of protection of a trademark.

3. Upon the transfer of the ownership rights with respect to an invention, utility solution, industrial design or trademark, all rights and obligations of the owner of the certificate (the transferor) established under the certificate of protection shall be completely transferred to the receiving person (the transferee) and the transferee shall become the owner of the object of industrial property from the date on which the transfer contract is registered at the Department of Industrial Property; any rights and obligations arising from transactions between the transferor and third persons may be transferred to the transferee provided that any such transfer must be included in the transfer contract.

4. In the case of transfer of the right to use an object, from the date on which the licensing contract is registered at the Department of Industrial Property, the party receiving the transfer (the transferee) shall have the right to use the object of industrial property in accordance with the scope, time-limits and conditions stated in the registered licensing contract.

5. The owner of an object of industrial property shall not be permitted to surrender the industrial property right with respect to an object under a licensing contract within the duration of validity if the licensee does not agree to early termination of the licensing contract. This provision shall not be applicable in cases where one co-owner surrenders its portion, or several co-owners surrender their respective portions, of the right but other co-owners continue their ownership of the object.

Article 38 Conditions of Restrictions on Transfer of Industrial Property Rights

1. The transferor shall only be permitted to transfer its rights within the scope of protection by law and within the period of protection and must ensure that the transfer shall not cause any dispute with a third party. In the case of any dispute caused by the transfer of industrial property rights, the transferor must be responsible for resolution of the dispute.

2. In cases where industrial property rights belong to co-owners, each co-owner shall only be permitted to transfer his or her portion of the industrial property right to another person if the remaining co-owners so agree; or if one or several of the co-owners disagree but do not receive the offered portion of the industrial property right and do not have proper reasons for the disagreement.

3. Industrial property rights with respect to an appellation of origin of goods shall be non-transferable.

4. Transfers of industrial property rights with respect to a trademark must not cause any confusion in relation to the characteristics and origin of the goods or services bearing the trademark.

Ownership rights with respect to an affiliated trademark shall only be transferred at the same time as all of the affiliated trademarks.

Transfers of ownership rights with respect to a well-known trademark must ensure that the prestige of such well-known trademark is maintained.

Article 39 Contract for Transfer of Industrial Property Rights

1. Any transfer of industrial property rights shall be made in writing in the form of a contract. Any oral arrangement or arrangement in the form of official letters, correspondence or telegrams shall not be considered to be a contract for transfer of industrial property rights and shall have no legal effect.

In cases where the transfer of industrial property rights forms part of another contract, the provisions on such transfer shall be separated from the remaining provisions of the contract and shall be in accordance with the stipulations provided herein.

2. The contents of a contract for transfer of industrial property rights shall be stipulated by the Minister of Science, Technology and Environment.

Article 40 Obligations of Parties

1. The transferor shall have the following obligations:

- to register the contract in accordance with article 42 of this Degree if registration has not been carried out by the transferee;
- to pay taxes on the transfer in accordance with the legislation on taxation;
- to settle any dispute with a third party which arises from the transfer;
- (with respect to the transferor of a licence) to carry out appropriate measures against any interference by a third party which causes damage to the transferee. In the event that the transferor does not take such measures within three months of notification by the transferee of such interference, the transferee may request the relevant State authorities to deal with the interference.

2. The transferee shall have the following obligations:

- to register the contract in accordance with article 42 of this Degree if registration has not been carried out by the transferor;
- to effect payment to the transferor in accordance with the amount and method agreed by the two parties;

- to be subject to inspection of the goods which bear the licensed trademark if it is considered necessary and to ensure that the quality of the goods is the same as that of the goods produced by the transferor;
- to print on the product or packaging an indication that the product has been produced under the licence granted by the transferor and the name of the transferor.

Article 41 Price and Method of Payment for Transfer of Industrial Property Rights

The price and method of payment for transfer of industrial property rights shall be agreed by the two parties in accordance with the laws on technology transfer.

Article 42 Registration of Contracts for Transfer of Industrial Property Rights

1. All contracts for transfer of industrial property rights, including cases where the transfer of an industrial property right forms part of another contract, shall be registered at the Department of Industrial Property as stipulated in this article.
2. The requirements for application for registration and the procedures for registration of transfers of industrial property rights shall be specified by the Minister of Science, Technology and Environment.
3. The registration procedures applicable to the transfer of industrial property rights shall also apply to amendments of registered transfer contracts, including sub-licensing.

Article 43 Automatic Suspension and Invalidation of Contract for Transfer of Industrial Property Rights

The implementation of a contract for transfer of industrial property rights shall automatically be suspended when the industrial property rights of the transferor are suspended or upon the occurrence of an event of force majeure rendering implementation of the contract impossible.

A contract for transfer of industrial property rights shall be automatically invalidated upon cancellation of the industrial property rights of the transferor.

Article 44 Obligation of Payment to Authors

1. Pursuant to article 798.1 of the Civil Code, the owner of industrial property rights with respect to an invention, utility solution or industrial design shall pay the author or co-authors of the invention, utility solution or industrial design for the creation thereof in the event that the author is not the owner or co-owner and there is no other agreement between the owner and the author.
2. Unless otherwise agreed by the author and the owner of the industrial property right, the rate and period of remuneration shall be in accordance with the following:
 - (a) The minimum rate of remuneration to the author of an invention or utility solution shall be ten (10) per cent of the revenue from the use of such invention or utility solution; or fifteen (15) per cent of the total sum received by the owner of the industrial property right on each occasion of licensing or as compensation for compulsory licensing.
 - (b) The minimum rate of remuneration to the author of an industrial design shall be two per cent of the annual revenue from the use of such industrial design; or fifteen (15) per cent of the sum received by the owner of the industrial property right on each occasion of licensing or as compensation for compulsory licensing.

(c) Remuneration shall be paid to the author no later than two months after each year of use or one month after receipt by the owner of the industrial property right of licensing payments or compensation for compulsory licensing.

3. Where there is an agreement between the author and owner of the industrial property right which is different from the provisions in clauses 1 and 2 of this article, the remuneration shall be paid in accordance with such agreement.

Article 45 Obligation of Payment of Fee to Maintain Validity of Certificate of Protection

Pursuant to article 798.2 of the Civil Code, owners of industrial property rights shall pay fees for maintaining the validity of certificates of protection. In the event that the fee for maintaining the validity of a certificate of protection is not paid, the validity of such certificate shall be suspended in accordance with article 28.2(b) of this Decree.

Article 46 Obligation of Use of Objects of Industrial Property

1. Owners of industrial property rights with respect to inventions, utility solutions, and industrial designs which have a significant impact on national security and defence, people's health care or environmental protection shall be obliged to use such inventions, utility solutions, and industrial designs to meet the needs of the nation and/or society.

In the event that the owner of the invention, utility solution, or industrial design fails, having made every endeavour, to meet the needs of the nation and/or society, such owner shall be obliged to license competent persons who are able and wish to use the invention, utility solution or industrial design on reasonable terms and conditions.

2. The owner of industrial property rights with respect to a trademark or appellation of origin of goods shall use such trademark or appellation continuously and shall not suspend that use for more than five consecutive years. In the event that this obligation is not fulfilled, the validity of the certificate of protection of trademark or the certificate of protection of appellation of origin of goods shall be suspended in accordance with article 28.2(c) of this Decree.

3. The transfer of the right to use an object of industrial property shall not be deemed to be a use of such object for the purpose of fulfilling the obligation provided for in this article.

The use of an object of industrial property by the licence transferee shall be deemed to be a use of such object for the purpose of fulfilling the obligation provided for in this article.

Article 47 Rights and Obligations of Persons to Whom Certificate of Right to Use Appellation of Origin of Goods is Issued

1. The person to whom a certificate of the right to use an appellation of origin of goods is issued shall have the following rights:

(a) To use the appellation of origin of goods for any of his or her products which have been included in the list of registered products.

(b) To request the authorized State body to compel any person to cease acts of infringement and make compensation for damage arising from unlawful use of the appellation of origin of goods or the use of similar signs which causes confusion with the appellation, including cases where the actual origin of products has been clearly stated, where the appellation is translated into other languages or used with such words as "sort of", "type of", "adapted from" or similar words.

2. The person to whom a certificate of the right to use an appellation of origin of goods is issued shall have the following obligations:

(a) To ensure the quality and distinctive characteristics of the products bearing the registered appellation of origin of goods.

(b) To fulfill the requirements of and to create favourable conditions for the authorized State body to examine the quality of products and for organizations to inspect the quality and distinctive characteristics of the products bearing the appellation of origin of goods, where necessary.

Article 48 Rights of Authors

1. The author(s) of an invention, utility solution or industrial design shall have the following rights:

(a) To have his or her or its name stated in the certificate of protection and in the National Registration Book of inventions, utility solutions, and industrial designs as the author(s) and in other documents published in relation to such objects;

(b) To receive remuneration from the owner of the industrial property rights in accordance with article 44 of this Decree;

(c) To request measures be taken, or to take legal action, against infringement of his or her or their rights above.

2. The material rights and the rights to request measures to be taken or to take legal action of the author of an invention, utility solution or industrial design stated in clauses 1(b) and (c) of this article may be transferred to another person and/or bequeathed in accordance with law.

CHAPTER 5

Restrictions on Use of Industrial Property Rights and Dealing with Infringements of Industrial Property Rights

Article 49 Conditions for Enforcement of Industrial Property Rights

When exercising his or her rights, the owner of an object of industrial property or the transferee of the right to use an object of industrial property shall not breach any provision of law, take any action which is prohibited by law, or cause damage to State interests or public interests and shall not infringe the legitimate rights and interests of other persons. Where the exercise of industrial property rights leads to the one of the above breaches or infringements, the rights shall not be exercised.

Article 50 Rights of Persons Making Previous Use of Inventions, Utility Solutions and Industrial Designs

1. Prior to the date of submission of the application for a certificate of protection of an invention, utility solution or industrial design, if any individual, legal entity or other entity has been independently making use of such invention, utility solution or industrial design, such individual, legal entity or other entity shall be entitled to continue to so use within the scope or volume of use prior to the date of submission of the application ("the previous right to use"). The owner of the certificate of protection or the owner of the object of industrial property may not, after obtaining the certificate of protection, request that any measure be taken or take legal action and exercise temporary rights against the individual, legal entity or other entity previously using such object of industrial property

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provided that such individual, legal entity or other entity does not expand the scope or volume of use as compared with prior to the date of submission of the application.

2. If, after the date of submission of the application for a certificate of protection as stated in clause 1 of this article, the individual, legal entity or other entity expands the scope and volume of use of the object of industrial property as compared with the previous use, the expanded part shall be deemed not to be part of the previous right to use.

3. The person having the previous right to use may not transfer such right to other persons, except where the whole previous right to use is transferred together with the business establishment where the previous use was made.

Article 51 Transfer of Right to Use Pursuant to Decision of Authorized State Body (Compulsory Licensing)

1. Compulsory licensing means the compulsory permission of the right to use an object of industrial property by the owner of the object of industrial property or by the transferee of the full right to use an invention, utility solution or industrial design to an individual, legal entity or other entity pursuant to the decision of the authorized State body specified in this article.

2. A person possessing industrial property rights shall only be compelled to carry out compulsory licensing in the circumstances provided for in article 802 of the Civil Code.

The provisions of article 802.1 of the Civil Code shall not be applicable in the period of time prior to the expiration of the period of four years from the date of submission of an application for a certificate of protection and prior to the period of three years from the date of issuance of a certificate of protection.

The person being compelled to carry out compulsory licensing shall have the right to request that the validity of the compulsory licensing be suspended when the circumstances giving rise to such licensing have terminated and are unable to occur again, provided that such suspension of validity shall not cause any damage to the person to whom a compulsory licence was granted.

3. The Ministry of Science, Technology and Environment shall be the authorized State body considering requests for compulsory licensing and making decisions on compulsory licensing and decisions on suspension of validity of compulsory licensing.

4. Applications for compulsory licensing shall meet the requirements with respect to form and contents as specified by the Minister of Science, Technology and Environment.

5. Within fifteen (15) days of receipt of an application for compulsory licensing, the Ministry of Science, Technology and Environment shall notify the owner of the object of industrial property or the transferee of the full right to use the invention, utility solution or industrial design of the above application and request the notified person to give his or her opinion in writing within thirty (30) days of notification.

Where it is deemed necessary, the Ministry of Science, Technology and Environment may request the parties concerned to negotiate for the purpose of resolving any discrepancy in opinion in order to enter into voluntary licensing.

In the event that the parties fail to reach an agreement on voluntary licensing and the refusal of the owner to license voluntarily is considered unreasonable, the Minister of Science, Technology and Environment shall make a decision to compel the owner to grant a licence within three months of receipt of the application. Conversely, the Minister

of Science, Technology and Environment shall make a decision refusing the application for compulsory licensing.

6. The Minister of Science, Technology and Environment must stipulate the terms of licensing in the decision on compulsory licensing in accordance with the following provisions:

(a) The compulsory licence shall be a non-exclusive licence;

(b) The compulsory licence shall be limited within a scope and period which are sufficient to meet the objectives for such licensing;

(c) The person to whom a compulsory licence is granted may not transfer the right to use under such licence to other persons, except where transferred together with the business establishment using such licence, and may not grant sub-licences to other persons;

(d) The person to whom a compulsory licence is granted must pay to the licensor an amount corresponding to the economic value of the right to use under such licence, or equivalent to the price for transfer of a voluntary licence pursuant to a contract with the same scope and period of licence.

The decision on compulsory licensing shall be published in the Official Gazette of Industrial Property within one month from the signing date.

7. Within one month of issuance of a decision on compulsory licensing of the Minister of Science, Technology and Environment, the possessor of the industrial property right shall grant a compulsory licence to the applicant on the terms stipulated in the decision of the Minister of Science, Technology and Environment.

8. A person who is compelled to grant a compulsory licence shall have the right to lodge a complaint regarding any decision on compulsory licensing with the Minister of Science, Technology and Environment.

A person submitting a request for compulsory licensing shall have the right to lodge a complaint with the Minister of Science, Technology and Environment regarding any decision on refusal to accept the request for compulsory licensing.

The procedures for complaints and resolution of complaints as provided for in article 27 of this Decree shall also apply to complaints lodged with the Minister of Science, Technology and Environment in accordance with the provisions of this clause, where the Minister of Science, Technology and Environment shall resolve first complaints.

Where the complainant disagrees with the resolution of the complaint by the Minister of Science, Technology and Environment, he or she shall have the right to file a complaint with the Prime Minister of the Government in accordance with the Law on Complaints and Denunciations or to initiate legal action in accordance with administrative legal proceedings.

Article 52 Acts Not Falling Within Exclusive Right of Owners of Industrial Property Rights

1. Pursuant to article 803 of the Civil Code, where the acts of a third person using an invention, utility solution or industrial design do not fall within the exclusive right of the owner of industrial property rights, the owner of industrial property rights shall not request measures to be taken or take legal action against such acts pursuant to article 36 of this Decree in the following circumstances:

(a) The use was not for commercial purposes;

(b) The use of products resulted from the product having been released on the market (including overseas markets) by the owner of the object of industrial property, the person to whom a compulsory licence was granted or a prior user;

(c) The use was only for the purpose of maintaining the operation of foreign means of transportation which are in transit or temporarily located in the territory of Vietnam.

2. The provisions of clause 1(a) and items appropriate to trademarks and appellations of origin of goods stipulated in clause 1(b) of this article shall also apply to trademarks and appellations of origin of goods.

Article 53 Infringement of Industrial Property Rights and Infringement of Rights of Authors of Inventions, Utility Solutions and Industrial Designs

1. The undertaking of one of the acts with respect to a protected object of industrial property as stipulated in article 805 of the Civil Code and specified in article 34 of this Decree without the permission of the owner of such object by a person other than the owner of the object of industrial property or other than a person making previous use as stipulated in article 50 of this Decree, and where such acts are not stipulated in articles 51 and 52 of this Decree, shall be considered an infringement of industrial property rights.

The following acts shall also be considered an infringement of rights of an owner of industrial property rights:

(a) Using an industrial design which is not substantially different to a protected industrial design;

(b) Using a sign which is identical to a protected trademark under a certificate of trademark registration or under international registration for goods or services which are similar or related to the goods or services included in the registered list attached to such trademark and/or using a sign which is similar to such trademark for goods or services of the same kind, or for goods or services which are similar or related to the goods or services included in the registered list attached to such trademark if such use is able to cause confusion in relation to the origin of goods;

(c) Using a sign which is identical or similar to a well-known trademark, or a sign in the form of definition or phonetic transcription of such trademark for any goods or services, including goods or services of other kinds or which are not similar or related to the goods or services included in the list of prestigious goods and services bearing such well-known trademark if such use is able to cause confusion in relation to the origin of goods or cause an erroneous impression of the relation between the person using the sign and the entity possessing the trademark which is recognized as a well-known trademark.

2. The failure of the owner of an object of industrial property to make payment to the author of that object and to ensure the spiritual rights of the author as provided for in article 48.1(a) and (b) of this Decree shall be considered an infringement of the rights of authors of inventions, utility solutions, industrial designs.

Article 54 Protection of Industrial Property Rights and Rights of Authors of Inventions, Utility Solutions or Industrial Designs

1. Industrial property rights and rights of authors of inventions, utility solutions or industrial designs shall be protected by the State. Any infringement of industrial property rights and rights of authors of inventions, utility solutions or industrial designs shall be strictly prohibited. Any such infringement shall be dealt with depending on the seriousness of the infringement and in accordance with law.

2. The right to initiate legal proceedings with respect to an infringement of industrial property rights or rights of authors of inventions, utility solutions or industrial designs shall be enforced as stipulated by the legislation on civil procedures.

Depending on its seriousness and consequences, an infringement of industrial property rights or rights of authors of inventions, utility solutions or industrial designs may be subject to administrative penalty or criminal investigation as stipulated by law.

CHAPTER 6

Industrial Property Representation

Article 55 Definitions

The terms used in this Chapter shall have the following meanings:

Industrial property representation service organization is an enterprise which has registered its business of industrial property representation services in accordance with law.

Industrial property representation person is a regular member of an industrial property representation service organization who is granted a Card of Industrial Property Representation Person by the Department of Industrial Property.

Industrial property representative refers to an industrial property representation service organization and/or industrial property representation person.

Article 56 Functions and Duties of Industrial Property Representatives

1. Industrial property representation service organizations shall carry on the following services:

- Representing other persons before the Department of Industrial Property and before other authorized State bodies in carrying out procedures related to the establishment and protection of industrial property rights;
- Providing consultancy on issues related to the procedures for establishment and protection of industrial property rights;
- Providing other services in relation to the establishment and protection of industrial property rights.

2. An industrial property representation person shall directly carry out the representation activities of the industrial property representation service organization of which he or she is a member.

Article 57 Powers and Responsibilities of Industrial Property Representatives

1. An industrial property representative shall not be permitted to be a representative of the Department of Industrial Property or the body in charge of management of industrial property or to exercise the powers of such bodies.

2. In its industrial property representation activities, an industrial property representation service organization shall have civil powers and liabilities in accordance with civil legislation.

3. Only those people who have been granted a Card of Industrial Property Representation Person may carry out activities in the field of industrial property representation.

An industrial property representation person may only work for the industrial property representation service organization of which he or she is a member.

Any industrial property representation shall be carried out under the name of an industrial property representation service organization. The industrial property representation organization and person carrying out such representation shall be responsible for any issue in relation thereto.

4. An industrial property representation service organization may only carry on activities within its authorization and may only re-authorize another industrial property representation service organization upon the written consent of the authorizing person.

5. Industrial property representation service organizations shall not carry on the following activities:

- Simultaneous representation of disputing parties;
- Withdrawal of applications for a certificate of protection, declaration of surrender of protection or withdrawal of complaints related to the establishment of industrial property rights where the power of attorney does not so provide;
- Disclosure of any information related to national security and interests when conducting representation activities.

6. Industrial property representation persons shall present their Cards of Industrial Property Representation Person when conducting transactions or entering into contracts on representation.

Prior to entering into contracts on representation services, the industrial property representation service organization and the industrial property representation person shall expressly notify the fees or other amounts payable to the State in relation to the establishment and protection of industrial property rights as well as the fees or other amounts payable for the services, which shall be specified in the tariff of the organization registered at the Department of Industrial Property.

The industrial property representation service organization shall not deceive or force clients to enter into contracts for industrial property representation.

7. Industrial property representation service organizations and industrial property representation persons shall have the following obligations:

- To maintain the confidentiality of information and documents provided concerning their representation;
- To inform fully and truthfully of any notification or request of the Department of Industrial Property or the body in charge of management of industrial property; to deliver in a timely manner the certificate of protection and other decisions to the represented person;
- To protect the interests of the represented person by way of timely response to the requirements of the Department of Industrial Property or the body in charge of management of industrial property with respect to the represented person;
- To inform the Department of Industrial Property or the body in charge of management of industrial property of any changes in relation to the name, address, and other information of the represented person, if necessary.

8. An industrial property representation service organization may only abandon its industrial property representation activities if all its incomplete representation activities can be legally transferred to another industrial property representation service organization.

Article 58 Conditions for Business and Practice of Industrial Property Representation

1. Conditions for granting of a Card of Industrial Property Representation Person:

Only persons who satisfy the following criteria may be granted with a Card of Industrial Property Representation Person:

- Being a Vietnamese citizen having full capacity for civil acts;
- Residing in Vietnam;
- Having an undergraduate degree with a major in law or a technological science;
- Having a certificate indicating that he or she has attended an official course on industrial property; or having directly been involved in professional legal matters related to industrial property for at least five consecutive years; or having directly evaluated applications for industrial property rights at a national or international industrial property body for at least five consecutive years;
- Having a certificate indicating that he or she has successfully passed the examination on the legislation on industrial property rights of Vietnam currently in force which has been granted by the Department of Industrial Property and is within its duration of validity;
- Not working for a State body or organization which is not an enterprise.

2. Conditions for business of industrial property representation services:

Industrial property representation service organizations must satisfy the following criteria:

- Being an enterprise established under the laws on enterprises;
- Not having foreign invested capital;
- Having the right to carry on industrial property representation services (as stated in the Charter and Business Registration Certificate);
- Having at least two regular full-time members being industrial property representation persons, of whom one is the head of the organization or is authorized by the head of the organization to represent the organization.

Article 59 Procedure for Granting of Cards of Industrial Property Representation Persons and Issuance of Certificates of Business Registration of Industrial Property Representation Services

1. The Minister of Science, Technology and Environment shall stipulate procedures for submission of applications for a Card of Industrial Property Representation Person and for consideration of applications and granting of Cards of Industrial Property Representation Persons.

The Department of Industrial Property under the Ministry of Science, Technology and Environment shall be the authorized State body issuing Cards of Industrial Property Representation Persons.

2. The authorized State body carrying out business registration in accordance with the laws on enterprises shall be the authorized body issuing certificates of business registration of industrial property representation services to organizations which satisfy all of the criteria stipulated in article 58.2 of this Decree. The above body shall have the right to seek an opinion of the Department of Industrial Property about the satisfaction of the conditions for industrial property representation service business by enterprises applying for registration.

Upon issuance of a certificate of business registration of industrial property representation services, the body issuing the certificate of registration must provide notification to the Department of Industrial Property in order that the Department of Industrial Property shall include the industrial property representation service organization in the national register.

A list of individuals to whom a Card of Industrial Property Representation Person is granted and of industrial property representation service organizations shall be included in the national register of industrial property.

Article 60 Charges and Fees for Industrial Property Representation

1. Industrial property representation service organizations shall list all services of and fees and charges for industrial property representation in a tariff.

The tariff shall expressly state the charges and fees payable to the State and to the service. Fees and charges for services which are not provided by the organization shall not be included in the service fees and charges.

2. The service fees actually collected (exclusive of fees payable to the State) shall be taxable income as stipulated by law.

The fees actually collected shall not exceed the amount specified in the tariff.

The collection of service fees and charges related to representation activities shall be carried out publicly and in accordance with financial provisions. At the request of authorized State bodies, the industrial property representation service organization shall report on service fees and charges related to industrial property representation services.

Article 61 Withdrawal of Cards of Industrial Property Representation Persons or Certificates of Business Registration of Industrial Property Representation Services

1. Conditions for withdrawal of Cards of Industrial Property Representation Persons or certificates of business registration of industrial property representation services:

(a) The Department of Industrial Property shall withdraw the Card of Industrial Property Representation Person and remove the name from the list of industrial property representation persons in the following cases:

- Where the cardholder ceases industrial property representation activities;
- Where the cardholder fails to satisfy all criteria referred to in article 58.1 of this Decree;
- Where the cardholder commits a serious breach during the practice of industrial property representation activities which causes damage to the legitimate interests of the

represented person or other persons or causes damage to the prestige of State bodies and/or the State.

(b) In the following cases, the Department of Industrial Property shall notify the authorized body issuing certificates of business registration in order to withdraw certificates of business registration of industrial property representation services or remove the sector of industrial property representation service business (if the organization continues to engage in other fields of business):

- Where the organization fails to satisfy all criteria referred to in article 58.2 of this Decree;
- Where the organization breaches any provisions of the law, especially provisions of this Chapter;
- The authorized body must notify the withdrawal of the certificate of business registration of industrial property representation services to the Department of Industrial Property in order that the Department of Industrial Property shall remove the name of the organization from which the certificate of business registration is withdrawn from the national register.

2. Decisions on withdrawal of certificates of business registration of industrial property representation services or Cards of Industrial Property Representation Persons shall be published in the Official Gazette of Industrial Property.

3. In cases where the certificate of business registration of industrial property representation services of an industrial property representation service organization is withdrawn, any procedures which have not been completed by such organization shall be permitted to be suspended and the represented party shall be permitted to restore those procedures within a time-limit of three months calculated from the date of announcement of the decision on withdrawal of the certificate in the Official Gazette of Industrial Property.

CHAPTER 7

State Administration of Industrial Property Activities

Article 62 State Administration of Industrial Property Activities

1. The Government shall assume unified State administration of industrial property activities.
2. State administration of industrial property activities shall include the following:
 - (a) Promulgating legal instruments, policies, strategies, master planning and plans for development of industrial property activities;
 - (b) Carrying out procedures for establishment of industrial property rights;
 - (c) Protecting lawful interests of the State, organizations and individuals in the industrial property field;
 - (d) Organizing the implementation of the laws and policies on industrial property;
 - (dd) Organizing communication activities in relation to industrial property;

- (e) Managing industrial property representation and consultancy services;
- (g) Training and fostering the workforce conducting industrial property activities;
- (h) Carrying out international co-operation with respect to industrial property;
- (i) Guiding, inspecting and examining the implementation of policies and compliance with the laws on industrial property;
- (k) Resolving complaints and denunciations, and dealing with breaches of the laws on industrial property.

Article 63 Responsibilities of Authorized State Bodies in Charge of Management of Industrial Property

1. The Ministry of Science, Technology and Environment shall assist the Government in undertaking uniform State management of industrial property throughout the country and shall have the responsibility to organize and direct the implementation of State regimes, policies and laws in relation to industrial property and to ensure uniform management of industrial property activities throughout the country.

2. The Department of Industrial Property under the Ministry of Science, Technology and Environment shall be the State administrative body having the responsibility to assist the Minister of Science, Technology and Environment to exercise the responsibilities stated in clause 1 of this article.

The Department of Industrial Property shall have the following functions, powers and duties:

- (a) To implement the functions of the State body authorized to issue certificates of protection of industrial property rights at the request of individuals, legal entities and other entities;
- (b) To carry out the procedures for suspension, cancellation and extension of validity of certificates of protection; to register contracts for transfer of industrial property rights;
- (c) To take measures for protection of the legitimate interests of the State, organizations and individuals in the field of industrial property; to co-ordinate with other State bodies and social organizations in the implementation of measures to protect industrial property rights and to ensure strict compliance with the provisions of legislation on industrial property;
- (d) To organize information activities in relation to industrial property;
- (e) To examine the professional knowledge of, issue Cards of Industrial Property Representation Person to, and exercise professional and technical management of industrial property representation service organizations;
- (f) To provide technical guidance and professional training in relation to industrial property for the bodies in charge of management of industrial property within relevant ministries, sectors and localities;
- (g) Within its authority, to conduct international co-operation activities in the field of industrial property.

3. Ministries, ministerial equivalent bodies, Government bodies and people's committees of provinces and cities under central authority shall have the responsibility to organize,

direct and control industrial property activities in their respective sectors and localities in accordance with their respective duties and functions.

The bodies in charge of management of science, technology and environment within sectors and localities shall have the responsibility to assist the leaders of their sectors and localities in the implementation of the above functions and to undertake directly the following duties:

(a) To propose to ministers, heads of ministerial equivalent bodies or Government bodies, or chairmen of provincial or municipal people's committees to take specific measures to implement State policies in relation to industrial property and to arrange for the implementation of those measures; to prepare plans and organize the implementation of plans for development of industrial property activities in their respective branches or localities;

(b) To organize a system of management of industrial property activities within their respective sectors and localities and to take measures in order to enforce the effectiveness of such system;

(c) To organize promotion of policies in relation to industrial property, to co-ordinate with social organizations to take measures to promote creative activities and industrial property activities;

(d) To assist entities which fall within the authority of management of the respective sectors and localities in the completion of the procedures for establishment of industrial property rights in Vietnam and overseas;

(e) To co-ordinate with bodies in charge of law enforcement in the protection of industrial property rights and to deal with breaches of legislation on industrial property.

Article 64 Responsibilities of Ministries, Sectors and Localities

1. The Ministry of Science, Technology and Environment shall have the responsibility to stipulate the contents of applications, procedures for submission, receipt and verification of applications for certificates of protection of industrial property; procedures for approval and registration of contracts for transfer of industrial property rights; procedures for compulsory licensing; management of innovative activities; and, in conjunction with the Ministry of Defence and the Ministry of Interior, to stipulate the procedures for submission, verification and issuance of certificates of protection, use, transfer and announcement of confidential inventions and utility solutions.

2. The Ministry of Finance shall have the responsibility to co-ordinate with the Ministry of Science, Technology and Environment to stipulate the services and rates of charges and fees for industrial property, and the management and use of such charges and fees.

3. The Ministry of Agriculture and Rural Development and the Ministry of Marine Products shall have the responsibility to review special products; to determine the areas used for cultivation or production and the distinctive characteristics or qualities of such agricultural products and aquatic products, and to request local people's committees to provide guidelines to relevant persons or organizations for registration of appellations of origin in respect of such special products; the Ministry of Agriculture and Rural Development shall have the responsibility to co-ordinate with the Ministry of Science, Technology and Environment to prepare and submit to the Government regulations on protection of the rights of persons or organizations creating new strains of cultivated plants or animals.

4. The Ministry of Health shall have the responsibility to co-ordinate with the Ministry of Science, Technology and Environment to stipulate the use of trademarks in respect of

pharmaceutical products on the basis of compliance with the provisions related to trademarks in this Decree, to prepare and submit to the Government regulations on protection of the rights of people creating methods of disease prevention, diagnosis and treatment; to co-ordinate with the Ministry of Science, Technology and Environment and the Ministry of Industry to review foods and beverages having distinctive characteristics or qualities due to the geographical conditions of the place of manufacture; and to request local people's committees to provide guidelines to relevant persons or organizations for registration of appellations of origin in respect of those foods and beverages.

5. The Ministry of Education and Training shall have the responsibility to co-ordinate with the Ministry of Justice and the Ministry of Science, Technology and Environment to introduce the subject of industrial property into the curriculum of universities and colleges.

6. The General Department of Customs shall have the responsibility to co-ordinate with the Ministry of Science, Technology and Environment to stipulate measures for border control with respect to industrial property in the case of imported and exported goods.

7. The Ministry of Trade shall have the responsibility to co-ordinate with the Ministry of Science, Technology and Environment to stipulate the inspection of industrial property with respect to goods which are manufactured and put into circulation in the market.

8. Chairmen of people's committees of provinces and cities under central authority shall have the responsibility to review all special products manufactured in their respective localities in order to provide guidelines for registration of appellations of origin of goods by relevant persons or organizations within their localities.

Article 65 Protection of National Interests and Social Interests in Industrial Property Activities

1. The establishment and implementation of industrial property rights shall not violate the interests of the State.

2. Protected objects of industrial property which are owned by a State organization or enterprise or an organization or enterprise having State capital contributed to a joint venture shall be assets of the State. The above organizations or enterprises shall have the responsibility to protect, maintain and develop the prestige and value of such assets.

3. Confidential inventions and utility solutions:

(a) Inventions or utility solutions of Vietnam which are related to national defence and security or which have a special economic value shall be considered confidential inventions or utility solutions.

(b) Authors, owners of objects of industrial property and concerned persons engaged in the preparation, submission and verification of applications for a certificate of protection and the use of confidential inventions and utility solutions shall be responsible for maintaining the confidentiality of such inventions and utility solutions in accordance with provisions on protection of national secrets.

4. Appellations of origin of goods of Vietnam are national assets. The right to use an appellation of origin of goods shall belong to the owner of a certificate of the right to use the appellation of origin of goods and shall not be permitted to be transferred to any other person in any form.

5. Only the owner of an object of industrial property shall be permitted to provide instructions that his or her or its products are protected or subject to his or her or its

exclusive right, including instructions in the form of signs applied to products or used for advertising or during commercial transactions, and only during the period of protection.

If products are manufactured under licence, instructions must be provided on products and during advertising or commercial transactions.

If products are manufactured in Vietnam under foreign licence or bear a trademark which may cause confusion with a foreign trademark or a trademark of foreign origin, the "Made in Vietnam" instruction must be stated in full (not abbreviated) on the products.

Article 66 Dealing with Administrative Breaches in Relation to Industrial Property

Administrative breaches in relation to industrial property shall be dealt with in accordance with the provisions of Decree 12-1999-ND-CP of the Government dated 6 March 1999 on penalties for administrative breaches in relation to industrial property and other relevant laws.

CHAPTER 8

Final Provisions

Article 67 Protection of Industrial Property Rights of Foreign Entities

1. Foreign persons or legal entities in the following categories shall have the right to apply for protection of their industrial property rights in Vietnam as stipulated in this Decree and shall be entitled to all rights and shall be liable for all obligations of Vietnamese entities:

(a) Persons and legal entities being entitled to rights in accordance with the Paris Convention;

(b) Persons and legal entities belonging to countries which have signed with Vietnam an agreement in relation to reciprocal protection of industrial property which have accepted, together with Vietnam, the principle of reciprocity with respect to protection of industrial property for their citizens and legal entities.

2. Citizens and legal entities belonging to member countries of the Madrid Agreement shall be entitled to all rights and shall be liable for all relevant obligations where international registration of their respective trademarks includes appointment of Vietnam and such registration is not refused by Vietnam.

3. Citizens and legal entities belonging to member countries of the PCT Treaty may file an application for a certificate of protection of an invention or utility solution in Vietnam in accordance with the PCT Treaty and with the procedures provided by the Minister of Science, Technology and Environment.

4. If the provisions in this Decree conflict with the provisions in any international treaty to which Vietnam has acceded, the provisions in that international treaty shall prevail.

Article 68 Application of PCT Treaty and Madrid Agreement

The Ministry of Science, Technology and Environment shall stipulate procedures for processing applications for international registration of inventions or utility solutions in accordance with the PCT Treaty, procedures for processing applications for international registration of trademarks in which Vietnam is appointed in accordance with the Madrid Treaty; and procedures for the preparation and submission of applications for registration of industrial property rights originating from Vietnam in foreign countries.

Article 69 Grandfather Clauses

1. Applications for protection on the basis of the Ordinance on Protection of Industrial Property dated 28 January 1989 which were filed with the Department of Industrial Property prior to 1 July 1996, including applications sent by post and bearing a postal seal of a date prior to that date, shall continue to be processed in accordance with the above Ordinance.
2. Certificates of protection issued on the basis of the 1981 Regulations on Initiatives and Inventions, 1988 Regulations on Utility Solutions, 1982 Regulations on Trademarks, 1988 Regulations on Industrial Designs or Ordinance on Protection of Industrial Property dated 28 January 1989 shall be valid until the expiry of their duration of validity. Upon expiry of above, the procedures for extension as stipulated in article 30.2 of this Decree shall apply and certificates of registration of trademarks and certificates of industrial designs shall be further extended if the owner of the certificate of protection so requests. All exclusive patents in respect of inventions the duration of validity of which is less than twenty (20) years shall be extended up until the expiry of the period of twenty (20) years calculated from the date of submission of the proper application.
3. All rights and obligations under certificates of protection (including certificates of protection issued under the Ordinance on Protection of Industrial Property dated 28 January 1989) and the procedures for maintenance, extension, amendment, transfer and resolution of disputes relating to such certificates of protection shall be applied in accordance with this Decree.
4. Outstanding applications for a certificate of protection filed as from 1 July 1996 shall be resolved in accordance with this Decree.

Article 70 Implementation Provisions

1. Ministers, heads of ministerial equivalent bodies and Government bodies, chairmen of people's committees of provinces and cities under central authority and the Director of the Department of Industrial Property shall be responsible for the implementation of this Decree.
2. This Decree shall replace the regulations previously issued by the Government in relation to initiatives and inventions (Decree 31-CP dated 23 January 1981 as amended 20 March 1990), trademarks (Decree 197-HDBT dated 14 December 1982 as amended 20 March 1990), industrial designs (Decree 85-HDBT dated 13 May 1988 as amended 20 March 1990), utility solutions (Decree 200-HDBT dated 28 December 1988 as amended 20 March 1990) and licensing (Decree 201-HDBT dated 28 December 1988) and Decree 84-HDBT dated 20 March 1990 on amendment of the above regulations. The provisions related to creative activities provided by the regulations on technical initiatives and improvements, rationalization of production and inventions (Decree 31-CP dated 23 January 1981) shall continue to be effective until the issuance of other provisions.
3. This Decree shall be of full force and effect as of the date of its signing.

On behalf of the government

Priminister

VO VAN KIET