

CIRCULAR NO. 3055/TT-SHCN ON December 31st, 1996

Circular of Ministry of Science, Technology and Environment for guiding the implementation of the provisions set forth in Decree No 63/CP with regard to procedures for establishment IP right.

Pursuant to Decree No. 63-CP of October 24, 1996 of the Government detailing the provisions on industrial property;

The Ministry of Science, Technology and Environment issues this Circular to stipulate in details and guide the implementation of the procedures for making, filing and examining applications for titles of protection, the procedures for approving and registering contracts for the transfer of industrial property right, the procedures for considering applications for non-voluntary licenses, the procedures for amending and extending the validity of titles of protections for international registration of inventions, utility solutions under the PCT Agreement and applications for international registration of trademarks under the Madrid Agreement and the procedures for the granting of industrial property representative licenses.

Chapter 1 GENERAL PROVISIONS

Terminology

The terms used in this Circular shall be construed as follows:

"The Decree" refers to Decree No. 63-CP of October 24, 1996 of the Government detailing the provisions on industrial property;

"Application" refers to an application for title of protection;

"Invention application", "utility solution application", "industrial design application", "trademark application" and "appellation of origin application" refer to an application for an invention patent, an utility solution patent, an industrial design patent, a certificate of registered trademark and a certificate of the right to use the appellation of origin of goods, respectively;

"International application" refers to an application for international registration of an invention or an utility solution filed in accordance with the PCT Agreement;

"International registration application" refers to an application for international registration of a trademark filed in accordance with the Madrid Agreement on the international registration of trademark;

"Trademark" refers to a "trademark" as provided for in Article 2 of the Decree;

"The subject named in document" is an individual, a legal person or an organization, that makes, issues or signs to certify the validity of a document.

Other terms shall be construed in accordance with the Decree.

Certification of documents:

Certification of signatures:

In the process of filing the procedures for the establishment, maintenance, extension, execution, transfer ... of industrial property rights as prescribed in this

Circular, the signature of the person named in papers and/or documents used in transaction with the competent agencies, must be certified that it is the true signature of such person and in case where the signatory is the representative of the subject named in the document, he/she must be certified to be authorized to represent the subject named in document, in accordance with the following stipulations:

For a subject having a lawful seal, the certification of signature shall be made affixing his/her/its seal in the signature;

For Vietnamese subject having no lawful seal, the certification of signature must be done at the State Notary Public or the office of the administration of the locality where the subject resides or has its head office;

For a foreign subject having no lawful seal, the certification of signature must be done at the Notary Public or at agency having equivalent competence.

Certification of copies:

Every document which is a copy of any form must be certified that it is duly copied from the original as prescribed in Paragraph b) before being used as official document in the process of filing the procedures related to industrial property at the competent agencies.

A document shall be considered a true copy of an original document if such copy is certified by one of the following agencies: (i) the notary public, (ii) the People's Committee or a competent agency, (iii) the State agency or social organization which has made the original document: if the copy has many pages, each page must be certified or every two consecutive pages must be sealed.

Certification of translations:

Any Vietnamese translation of a document must be certified that it is translated verbatim from the original as prescribed in Paragraph b) before being used as official document in the process of filing the procedures related to industrial property at the competent agencies.

The certification of a translation may be done in one of the following ways: (i) public notary; (ii) certification of the subject named in the original document; (iii) certification of all parties to the contract or agreement (if the original document is a contract or an agreement); (iv) recognition by the agency competent to use such translation in the process of carrying out the relevant procedures.

The person acting on behalf of the subject to carry out the industrial property procedures

Only persons mentioned in points 3.2 and 3.3 below shall be entitled to act on behalf of the subject to file application, supplement and amendment to the documents of the application; receive and reply to the comments of the National Office of Industrial Property related to the application; to decide the continuation or suspension of the process of requesting the protection; receive the title of protection; undertake the maintenance, amendment and extension of the validity of the title of protection as well as other industrial property procedures with regard to the National Office of Industrial Property and the competent agencies.

The National Office of Industrial Property shall be entitled to transact only with the above-mentioned persons and such transactions shall be considered the official

transactions with the subjects.

For entities who are entitled to directly file applications and conduct relevant procedures provided for in Clauses 2 and 3.a. Article 15 of the Decree, the following persons shall be entitled to conduct on behalf of the subjects the activities mentioned in point 3.1 above:

The very individual or his/her representative at law (if the subject is an individual);

The representative at law of the subject: an individual who is a member of the subject and authorized by the representative at law of the subject to represent; the head of the representative office or branch of the subject, or a person who is authorized by the representative at law of the subject (if the subject is a legal person or an entity of other type);

The head of the representative office in Vietnam of a foreign subject, who is authorized by such subject to represent it; the representative at law of an enterprise established in Vietnam with 100 percent of investment capital of the foreign subject, who is authorized by such subject to represent it;

A person meeting one of the conditions prescribed in paragraphs (i), (ii) and (iii) above who is also one of the individuals or belongs to one of the legal persons or other subjects – if the subject includes many individuals, legal persons or other subjects – and if such person is authorized by such individuals, legal person and other subjects to represent them.

For subjects that are entitled only to file applications and carry out relevant procedures through an Industrial Property Service Organization prescribed in Clause 3.b) of Article 15 of the Decree as well as any other subject carrying out the said procedures through an Industrial Property Service Organization, only those who have been granted Cards of Industrial Property Representative, belong to Industrial Property Service Organizations and have the written authorization of the subjects can conduct activities mentioned in point 3.1 above.

Authorization to carry out industrial property procedures

An authorization to carry out industrial property procedures must be made in writing (letter of procuracy), which must include the following contents:

(i) The name (surname), full address, telephone number, fax number (if any) of the authorizing party; (ii) The name (surname), full address, telephone number, fax number (if any) of the authorized party; (iii) the scope authorization (the tasks to be performed by the authorized party on behalf of the authorizing party); (iv) the term of authorization; (v) the place and date of making the letter of procuracy; (vi) the signature of the person who makes the letter of procuracy (certified in accordance with the provisions on the certification of signatures).

The authorized party must be an individual or organization entitled to carry out industrial property procedures as prescribed in points 3.2 (ii), (iii), (iv) and 3.3 of this Circular.

Any change in the scope of authorization and termination of the authorization before schedule must be reported in writing to the National Office of Industrial Property.

In the authorization scope stated in the letter of procuration includes many separate procedures, the authorized party can submit the copy of the letter of procuration, provided that he/she has submitted the original letter of procuration to the National Office of Industrial Property and indicated the number and date of submitting the dossier containing the original of the letter of procuration.

Chapter II

APPLICATIONS AND HANDLING OF APPLICATIONS

General requirements regarding the application

The application must ensure the consistency as required in Clause 2, Article 11 of the Decree and satisfy the general formality requirements mentioned in point 5.2 below.

The application must satisfy the following general formality requirements:

Each application shall be filed for only one title of protection, the type of title of protection to be granted must conform with the industrial property object described in the application;

All documents of the application must be made in Vietnamese, except for documents that can be made in other languages as stipulated in point 5.3 below;

All documents of the application must be laid out vertically and on one side of A4-format (210 mm × 297 mm) paper, with four margins on all sides, each 20 mm wide, except for documents added to the application for reason of necessity to support and further illustrate the application the sources of which are not for inclusion into the application, therefore may be otherwise laid out;

For documents that need to be made according to set forms, such forms must be filled with items at the proper places;

Each kind of document must have the required number of copies; if a document has many pages, each page must be numbered at its center-top position with Arabic numerals;

All documents must be clearly typewritten or printed with a permanent ink without any erasure or correction.

The following documents may be made in any language other than Vietnamese language but must be translated into Vietnamese:

The letter of procuration (if any);

Documents certifying the lawful right to file application, if the applicant is given such right by another person (inheritance certificate, certificate or agreement on the transfer of the application filing right, including the transfer of the application already filed; contract for job assignment or labor contract...);

Document on assignment of the priority right (if the application has a request for the priority right and such right is given by another person);

Relevant documents evidencing the basis of enjoying the priority right (the first application exhibition certificate);

The original documents or copies thereof included in the application to support the application.

Requirements regarding invention/utility solution application

In addition to the general requirements prescribed in point 5 of this Circular, invention/utility solution application must satisfy the requirements prescribed in this point.

The application must comprises the following documents:

The declaration requesting the grant of invention/utility solution patent, made under the form issued by the National Office of Industrial Property, 3 copies;

The invention/utility solution description paper (hereinafter referred to as the description paper), 3 copies;

The request for protection, 3 copies;

Drawings, diagrams, calculation tables ... (if required) to further clarify the nature of the technical solution indicated in the description, 3 copies;

The summary of the invention/utility solution, 3 copies;

The document certifying the lawful right to file application if the applicant is entitled to such right from another person (inheritance certificate, certificate or agreement on the transfer of the application filing right; the contract on work assignment or labor contract...), 1 copy;

The letter of procuration (if required), 1 copy;

The copy of the first application or exhibition certificate if the application has a request for priority right under the international agreement, 1 copy;

The vouchers of payment of application filing fee and application publicizing fee, 1 copy;

The documents mentioned in point 6.1 above must be submitted together. For the following documents, they can be submitted within 3 months from the date of filing the application:

The Vietnamese version of documents 6.1 (ii), 6.1 (iii) and 6.1 (v), if the application includes an English, French or Russian version;

The original of document 6.1 (vii) if the application includes a copy thereof;

The document 6.1 (viii), including its Vietnamese translation.

The description paper must totally reveal the nature of the technical solution requested to be protected. The description paper must provide information to such an extent that based on which a person with the average professional level in the corresponding technical area can apply such solution.

The description paper must clarify the novelty, creativity (if the protection object is an invention) and applicability of the technical solution requested to be protected.

The description paper must include the following contents:

The international criteria for invention classification (under the Strasbourg Agreement);

The name of the technical solution;
The area in which the technical solution is applied or involved;
The technical situation of the above-said area at the time of filing the application (the technical solutions already known);
The nature of the technical solution;
A brief description of the attached drawings (if any);
A model of application of the technical solution;
The obtainable benefits (the effectiveness of the technical solution).

The protection request aims to determine the scope (volume) of the protection of invention/utility solution. The protection request must be briefly and clearly presented in conformity with the description and drawings, in which the new characters of the technical solution requested to be protected must be clarified.

A summary of the invention/utility solution aimed at briefly publicizing the nature of the invention/utility solution. The summary must reveal the essentials of the nature of the technical solution for information purpose.

The requirements with respect to presentation and contents of the description paper, the drawings, the protection request, the summary of the invention/utility solution and other documents of the invention/utility solution application shall be prescribed by the National Office of Industrial Property.

Requirements regarding the industrial design application.

In addition to the requirements mentioned in point 5 of this Circular, the industrial design application must also satisfy the requirements prescribed in this point.

The application must comprise the following documents:

The declaration requesting the grant of industrial design patent, made in the form set out by the National Office of Industrial Property, 3 copies;

The description of the industrial design, 3 copies;

A set of photos or drawing of the industrial design, 6 copies;

The document certifying the legal right to file application, if the applicant is entitled to such right from another person (certificate of inheritance right; certificate or agreement on the transfer of application filing right; contract on work assignment or labor contract), 1 copy;

The document certifying the label ownership right if the industrial design includes a label, 1 copy;

The letter of procuration (if required);

A copy of the first application or exhibition certificate if the application has a request for priority right under the international agreements, 1 copy;

The vouchers of payment of application filing fee and application publicizing fee, 1 copy.

The documents mentioned in point 7.1 above must be submitted at the same time. The following documents may be submitted within 3 months from the date of filing the application:

A Vietnamese version of 7.1 (ii) document, if the application includes an English, French or Russian version;

Document 7.1 (v);

The original document 7.1 (vi), if the application includes a copy thereof;

Document 7.1 (vii), including the Vietnamese translation thereof.

The description of the industrial design must fully and clearly indicate the nature of the industrial design and must be in conformity with the set of photos or drawings and include the following contents:

The name of the industrial design;

The international index for the classification of industrial designs (under the Locarno Agreement);

The area of use of the products made upon the industrial design;

Similar industrial designs already known;

A list of photos or drawings;

The nature of the industrial design, clearly indicating the main external shaping features of the industrial design requested to be protected as distinguished from those of the industrial designs already known.

The set of photos or drawings must fully expose the nature of the industrial design as described in order to determine the scope (volume) of protection of such industrial design.

The photos/drawings must be clear and sharp, not causing any confusion between the products made upon the industrial design requested to be protected and other products.

All photos/drawings must be made on the same scale. The size of each photo must not be smaller than 90 mm × 120 mm and not larger than 210 mm × 297 mm.

The requirements regarding the description and the set of photos/drawings of the industrial design shall be prescribed by the National Office of Industrial Property.

Requirements regarding the trademark application.

In addition to the general requirements mentioned in point 5 of this Circular, the trademark application must satisfy the requirements prescribed in this point.

The application must comprise the following documents:

The declaration requesting the grant of certificate of registered trademark, on which the trademark sample is fastened, made in the form set out by the National Office of Industrial Property, 3 copies;

The regulation on the use of trademark in case the trademark requested to be protected is a collective trademark, 1 copy;

A sample of the trademark, 15 copies;

A copy of the document certifying the lawful business right (business license or certificate of business registration, etc.), 1 copy;

The document certifying the lawful right to file application, if the applicant is entitled to the application filing right from another person (inheritance certificate or agreement for the transfer of application filing right, including the application already filed; contract for work assignment or labor contract...), 1 copy;

The letter of procuration (if required);

A copy of the first application or exhibition certificate if the application has a request for enjoying the priority right under international agreements, 1 copy;

The document certifying the origin, awards, medals, in case the trademark contains such information , 1 copy;

The permit(s) of the competent agency, in case the trademark is printed with symbols, proper names, etc., as prescribed in point g Clause 2, Article 6 of the Decree, 1 copy;

The voucher of payment of application fee, 1 copy.

The above-mentioned documents must be submitted at the same time. The following documents can be submitted within 3 months from the date of filing the application:

The original of document 8.1 (vi), if the application includes a copy thereof;

Document 8.1 (vii), including the Vietnamese translation.

The description of the trademark in the declaration must clarify the particularities of the trademark, clearly indicating all constituent parts and overall significance of the trademark. If the trademark contains non-Vietnamese characters and words, their pronunciation must be clearly defined (transcribed into Vietnamese) and if such words have meanings, they must be translated into Vietnamese.

In case the letters, characters or words requested to be protected are displayed in geometric forms as distinctive elements of the trademark, the geometric form of such letters, characters and words must be described.

In case the trademark includes numerals other than Arabic or Roman numerals, such numerals must be converted into Arabic numerals.

In case the trademark is composed of many separate parts, which are, however, displayed at the same time on one product, the position of each part of such trademark on the product or the product's container must be clearly indicated.

The list of products, services bearing the trademark described in the declaration must be in line with or identical to the kinds of products, services specified in the business license or in the certificate of business registration and must be classified in groups in accordance with the table of international classification of products and services (under the Nice Agreement).

The trademark sample attached to the declaration as well as other trademark samples must be clearly displayed with a size not exceeding 80 mm ×80 mm and the distance between the two closest points must be shorter than 15 mm.

In case of a request for protection of colors, the trademark sample must be

displayed in the exact colors requested to be protected.

If there is no request for protection of colors, all mark samples must be displayed in black and white.

Requirements regarding the appellation of origin of goods application.

In addition to the general requirements stipulated in point 5 of this Circular, the appellation of origin of goods application must satisfy the requirements stipulated in this point.

The application must comprise the following documents:

The declaration requesting for the grant of certificate of the right to use the appellation of origin of goods, made under the form set out by the National Office of Industrial Property, 3 copies;

The copy of the document certifying the lawful business right (the business license, certificate of business registration, etc.), 1 copy;

The explanation of the peculiar quality of the products bearing the appellation of origin of goods, with the certification by a competent State agency, 1 copy;

The document of the competent agency certifying that the products produced or traded by the applicant have peculiar characteristics and quality and are produced on the territory corresponding to the appellation of origin of goods (in conformity with the explanation in document (iii)), 1 copy;

A copy of the title of protection of the appellation of origin of goods granted by the country of origin, or a document of the country of origin certifying that the right of the applicant to use the appellation of origin of goods is currently protected in the country of origin (in case the appellation of origin of goods comes from a foreign country), 1 copy;

A map of the territory corresponding to the appellation of origin of goods, in which the place where the applicant produces or conducts business is indicated, 1 copy;

The letter of procuration (if required), 1 copy;

The voucher of payment of the application fee, 1 copy.

If the applicant applies only for the certificate of the right to use an appellation of origin of goods which has previously been registered, the application can be filed without documents (iii) and (iv). If the appellation of origin of goods is from a foreign country, the application can be filed without documents (ii), (iii) and (vi).

The above-mentioned documents must be submitted at the same time. The original of document 9.1 (vii) can be submitted within 3 months from the date of filing the application if the application includes a copy of the original.

The agency competent to certify the particularities of the products bearing the appellation of origin of goods and certify that the products produced by the applicant have such particularities shall be the product quality control agencies at the central level or of the locality indicated in the appellation of origin of goods.

Filing the application

The application may be filed at the National Office of Industrial Property or at any other application receiving places set up by the National Office of Industrial Property. The application may also be sent by registered mails through the postal service to the above-said application-receiving places.

Receiving the application

Upon receiving the application, the National Office of Industrial Property shall have to: (i) check the list of documents specified in the declaration; (ii) affix a seal on the declaration certifying the date the application arrives at the National Office of Industrial Property; (iii) make notes on the disparity between the list of documents specified in the declaration and the number of documents actually attached to the application; (iv) conduct preliminary examination of the application to consider whether or not to accept the application in accordance with point 11.2 below; (v) send to the applicant a declaration already affixed with the seal certifying the arrival date of the application, the serial number of the application and the result of the check on the list of documents, with name and signature of the application receiver; (the above-said declaration shall substitute the receipt of the application).

The National Office of Industrial Property shall not accept the application if it finds that the application has one of the following failings:

The application does not include one of the following required documents: the declaration, which must contain the trademark sample and the list of products, services (in case of a trademark application); the appellation of origin of goods and the type of goods (in case of an appellation of origin of goods application), the description of the invention/utility solution, the request for protection (in case of an invention/utility solution application); the description of the industrial design and the set of photos and drawings of the industrial design (in case of an industrial design application), the letter of procuration (if required), the voucher of payment of fees;

The form of protection (the type of title of protection requested to be granted) is not in conformity with the industrial property object described in the application;

The declaration has no signature or/and seriously erased or modified.

If the application is not accepted, the National Office of Industrial Property shall notify the applicant of the reason(s) for non-acceptance. In case of an application sent by post, the National Office of Industrial Property shall notify in writing within 15 days from the arrival date of the application; the National Office of Industrial Property shall not have to send back the application's documents to the applicant, but shall have to return the fees already paid together with the unaccepted application after deducting the expenses for the return of fees.

Handling of the documents of the application already accepted

After being accepted, the application shall be handled as follows:

A set of documents comprising the necessary documents shall be set apart to maintain the original state of the application (called "dossier set" of the application);

All remaining documents shall be made into a set used for examination in

accordance with provisions of this Circular.

Formality examination

After being handled in accordance with point 12 of this Circular, the application shall undergo the formality examination as prescribed in this point.

The application shall be considered improper if it has one of the following failings:

The application is made in any language other than Vietnamese, except the case provided for in point 5.3 of this Circular;

The declaration lacks information on the author (of an invention, utility solution or industrial design) and on the applicant, who fails to sign thereon, or whose signature is not certified or the information on the representative is erased or corrected;

There is ground to confirm that the applicant is not entitled to file the application;

The application is filed not in accordance with Article 15 of the Decree;

The description, the summary, the request for protection of invention, utility solution, the description of industrial design are made in English/French/Russian language but the applicant fails to add the Vietnamese versions thereof within the time limit prescribed in Points 6.2 and 7.2 of this Circular;

The letter of procuration is only a copy and the applicant fails to add the original within the time limit prescribed in points 6.2, 7.2, 8.2 and 9.2 of this Circular;

There exist in the application failings mentioned in point 13.3 below which invalidate the application, and though the National Office of Industrial Property has requested it, the applicant does not made the correction or the correction is not up to requirement;

The objects described in the application are objects which shall not be protected by the State as prescribed in Clause 4 of Article 4, Clause 3 of Article 5, Clause 2 of Article 6 and Clause 2 of Article 7 of the Decree.

Handling the failings of the application in the formality examination period

If there are in the application the following failings, the National Office of Industrial Property shall notify the applicant thereof and within 2 months from the date the notification is made, the applicant shall have to correct such failings:

One of the required documents is insufficient in the number of copies;

The application fails to satisfy the requirement for consistency;

The application fails to satisfy the requirement for presentation;

The trademark application fails to clearly indicate the type of trademark to be registered, is filed without description of the trademark, or the products on the list are not grouped or improperly grouped;

The information on the applicant is not consistent in separate documents or is erased and corrected;

The application fees are not paid in full.

The applicant can, on his/her own initiative, amend and/or supplement the documents of the application but is not allowed to extend the scope (volume) of the protection and change the nature of the industrial property object described in

the application and must pay the prescribed fees. If the amendment extends the scope (volume) of the protection or change the nature of the object, the applicant shall have to file a new application and all procedures shall have to commence from the beginning.

Determination of the date of valid application filing.

The date of valid application filing shall be determined as follows:

With regard to application having no failings stipulated in point 13.2 above, the date of valid application filing shall be the date the application arrives at the National Office of Industrial Property indicated in the seal of receiving the application on the declaration;

With regard to application having no failings stipulated in point 13.3 above, and failings, which have been corrected within the prescribed time limit, the date of the valid application filing shall be the date the application arrives at the National Office of Industrial Property indicated in the seal of receiving the application. If the failings are corrected after such time limit, the date of valid application filing shall be the the date all the failings have been corrected to make the application valid.

Determination of the priority date

The priority date of the application shall be determined as follows:

If the application does not claim the priority right, the priority date shall be the date of valid application filing;

If the application claims the priority right, the priority date shall be the date in such claim and adopted by the National Office of Industrial Property.

The National Office of Industrial Property shall notify the applicant of the result of formality examination of the application in accordance with the following regulations:

If the application is considered valid, the National Office of Industrial Property shall send to the applicant a notification of acceptance of the application, clearly stating therein the name, address of the applicant; the name of the industrial property service organization (if the application is filed through that organization); the name of the object described in the application, the date of valid application filing, the priority date; the serial number of the application; the existing failings that have to be corrected by the applicant and the time limit for the correction thereof. If the applicant fails to correct within such time limit, the consideration of the application shall not be continued;

If the application is considered invalid, the National Office of Industrial Property shall send to the applicant a notification of non-acceptance of the application clearly stating therein the name, address of the applicant, the name of the industrial property service organization (if the application is filed through that organization); the date the application arrives at the National Office of Industrial Property, the name of the object described in the application; and the reasons for the non-acceptance of the application (the reasons why the application is considered invalid);

If there still exist in the application failinas mentioned in point 13.3 above. the

National Office of Industrial Property shall send to the applicant a notification of the result of the formality examination of application clearly stating therein the name, address of the applicant, the name of the industrial property service organization (if the application is filed through that organization); the date the application arrives at the National Office of Industrial Property; the name of the object described in the application, the failings that have to be corrected and the time limit set for the correction.

The time limit for the formality examination is 3 months from the date the application arrives at the National Office of Industrial Property indicated on the application-receiving seal; For an application with a document or documents being filed late as described in points 6.2, 7.2, 8.2 and 9.2, the time limit for the formality examination is 3 months from the date such document is added to the application. Prior to the expiry of the above time limit, the National Office of Industrial Property shall have to conclude the formality examination and notify the applicant in accordance with provisions of point 13.7 above.

Announcement of valid application

All invention, utility solution, industrial design applications which are considered valid shall be announced by the National Office of Industrial Property on the Industrial Property Official Gazette within the following time limit:

An invention or utility solution application shall be announced in the 19th months calculated from the priority date, except the cases provided for in points b), c) and d) below:

In case of a request for early announcement, the application shall be announced within one month from the date the National Office of Industrial Property receives the request for early announcement or at a later date as requested;

For an invention, utility solution application, if there is a written request for content examination filed before the date the application is properly accepted, the application shall be announced within one month from the date of acceptance of the valid application;

For an invention or utility solution application, if there is a written request for content examination filed after the date the application is properly accepted but prior to the expiry of a time limit of 18 months calculated from the priority date, the application shall be announced within one months from the date the National Office of Industrial Property receives a request for content examination;

An international application and industrial design application shall be announced in the second month from the date of acceptance of the valid application, except for cases mentioned in point b) above.

The information related to a valid application shall be announced on the Official Gazette and include: all information on the valid application contained in the application acceptance notification, excluding the information on the failings which must be corrected; the summary of the invention or utility solution accompanied by drawings if necessary; one or a number of drawings and photos of the industrial design.

Every one can have access to more detailed information on the nature of the object described in the application announced on the Industrial Property Official Gazette, or can request the National Office of Industrial Property to provide such information and he/she shall have to pay the charges for information supply in accordance with regulations.

Request for examination of content of invention or utility solution

Within 42 months from the priority date of the invention application and 36 months from the priority date of the utility solution application, the applicant or any third party can request the National Office of Industrial Property to undertake examination of content of such invention or utility solution.

The person who requests the examination of content of an invention or utility solution filed after the announcement of the application shall be announced on the Industrial Property Official Gazette within one month from the date of receiving the written request for examination and the applicant shall be notified thereof.

The request for examination of content of an invention or utility solution shall have to pay prescribed fees.

The request for examination of content of an invention or utility solution filed after the announcement of the application shall be announced on the Industrial Property Official Gazette within one month from the date of receiving the written request for examination and the applicant shall be notified thereof.

The request for examination of content of an invention or utility solution filed before the announcement of the application shall be announced together with the application in accordance with points 14.1 c) and d) of this Circular.

15.3. Except for the case where the request for content examination is written in the declaration by the applicant him-herself, the request for examination of content of an invention or utility solution must be made in writing, clearly stating therein the name, address of the person who requests: the serial number and the date of filing the application of invention or utility solution the content of which is requested to be examined; the name, address of the applicant, the name of such invention, utility solution, and must be accompanied by the receipt or voucher of payment of examination fee.

16. Examination of the content of the application

16.1. The examination of the content of the application shall be undertaken by the National Office of Industrial Property in accordance with this point with respect to:

All trademark, industrial design and appellation of origin of goods applications if such applications have been properly accepted and the applicants have paid content examination fees

All international registration applications, and

Invention or utility solution applications including international applications, which have been properly accepted and if there are requests for content examination filed at the National Office of Industrial Property within the time limit prescribed in point 15 of this Circular.

16.2. The content examination aims to determine the possibility of protection of the object described in the application in accordance with the criteria for the protection or to determine the scope (volume) of the protection.

16.3. Within the time limit for content examination application, the National Office of Industrial Property shall have to notify the applicant and the person who has requested the content examination of the result of the content examination in accordance with the following regulations:

If the industrial property object is not up to the criteria for protection, the notification of result of the content examination must clearly state the reason(s) for refusal to grant the title of protection and set the time limit of 2 months from the date of notification for the application to appeal;

If the industrial property object is up to the criteria for protection but the protection scope (volume) must be narrowed or the application still has failings, the notification of the result of the content examination must clearly state such matters and set the time limit of 2 months from the date of notification for the applicant to appeal or correct the failings;

If the object is up to the criteria for protection, including the case mentioned in point b) above, the notification of the result of the content examination shall request the applicant to pay the fee for announcement of title of protection, the fee for registration and grant of title of protection and the fee for maintenance of the first year's validity (with respect to inventions and utility solutions).

Within the content examination time limit, the applicant can, on his/her own initiative, amend and/or supplement the documents included in the application and shall have to pay the prescribed fees.

The National Office of Industrial Property can request the applicant to amend and/or supplement documents within the set time limit. If the applicant fails to amend and/or supplement at the request of the National Office of Industrial Property without plausible reasons, the application shall be assumed withdrawn.

The amendment and/or supplement must not change the nature of the object or extend the scope (volume) of the protection defined in the application.

The content examination time limit shall be: (i) 18 months for an invention application, 9 months for a utility solution application calculated from the date of receiving the request for content examination if such request is filed after the announcement of the application, or from the date of announcing the application if the request is filed before the announcement of the application; (ii) 9 months for an industrial design application and trademark application from the date of signing the notification of acceptance of the valid application; (iii) 6 months for an appellation of origin of goods application calculated from the date of signing the notification of acceptance of the valid application.

If during the application content examination, the applicant wishes to, or at the request of the National Office of Industrial Property, amends and/or supplements documents, the content examination time limit can be extended to cover the period for the amendment and/or supplement.

Prior to expiry date of the content examination time limit, the National Office of Industrial Property shall have to notify the applicant and the person requesting the examination of the result of the content examination in accordance with point 16.3.

Chapter III

TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Contract for the transfer of industrial property right

A contract for the transfer of industrial property right is a contract for transferring the ownership over an industrial property object or a contract for transferring the right to use an industrial property object.

A contract for the transfer of the ownership over an invention, utility solution, industrial design or trademark must include the following main contents:

The name (surname) and full address of the transferor and the transferee;

The basis for the transfer (title of protection already granted or transferred to the transferor);

The object of the transfer (the whole ownership right over the whole volume of the protection of the industrial property object or over part of the volume of trademark protection or part of the list of goods and services);

The price for the transfer;

The rights and obligations of each party, including corresponding obligations which must not contravene Article 40 of the Decree;

The conditions for the amendment, termination or invalidation of the contract;

The method of settling complaints and disputes;

The signing date and place;

The signature of the parties or their authorized representatives, together with the names, titles of the signatories and certification of signatures.

The contract for the transfer of the right to use the invention, utility solution, industrial design or trademark ("License contract") must include the following contents:

The names (surname) and full address of the license transferor and transferee;

The basis for transferring the license (the title of protection already granted to the license transferor or the exclusive license contract);

The scope of the license, which includes:

The type of license (exclusive/non-exclusive);

The object of license determined by the restrictions on the right to use (the protected acts of use) and the restrictions on the industrial property object (the volume of protection of the industrial property object);

The territorial restriction (the Vietnamese territory);

The duration (the duration of protection of industrial property object).

In case of a sub-license, the license scope must fall within the license scope of the exclusive license contract on the corresponding sub-license;

The license price;

The rights and obligations of each party, including corresponding obligations which must not contravene Article 40 of the Decree;

The conditions for the amendment, termination or invalidation of the contract;
The method of settling complaints and disputes;
The signing date and place;
The signatures of the parties or their authorized representatives, together with the name and title of the signatories and certification of the signatures.

The license contract must not contain any unjustifiable provision on restrictions on the rights of the license transferee, especially the restriction provisions not derived from the rights of the license transferor over the industrial property object or not for the purpose of protecting such rights, such as:

Provisions directly or indirectly restricting the export of products manufactured under the license to territories where the license transferor is not the owner of corresponding industrial property object;

Provisions compelling the transferee of a trademark license to purchase the whole or part of the materials, components or equipment of the license transferor or of a person appointed by the license transferor, without aiming to ensure the quality of products manufactured by the transferee;

Provisions forbidding the license transferee to modify the industrial property object (except trademark), or compelling the license transferee or the right to file application for industrial property protection or industrial property right over such modifications.

Provisions forbidding the license transferee to appeal against the validity of the industrial property right, or the license transferor's right to transfer license.

If the transfer of industrial property right is part of another contract, the content of the industrial property right transfer shall be made into a part distinct from the other parts of the contract and shall comply with the provisions of this Point.

Types of contracts for the industrial property right transfer which must be approved and registered

18.1. According to Clause 5 Article 38 and Clause 5, Article 62 of the Decree, all contracts for the transfer of ownership over or the right to use industrial property object in the following cases must be approved by the Minister of Science, Technology and Environment before being registered in accordance with Article 42 of the decree and point 20 of this Circular:

One of the parties (the transferor or the transferee) is a State organization or has capital contribution from the State, and the other party is an individual or a non-State organization;

The transferor is an individual, legal person or any other Vietnamese entity and the transferee is a foreign individual or organization.

18.2. All contracts for the transfer of ownership or the right to use an industrial property object - including contracts already approved - must be registered in accordance with Article 42 of the Decree and point 20 of this Circular.

Procedures for approval of the contract for industrial property right transfer

19.1. The dossier of approval of the contract (hereinafter referred to as approval dossier) shall comprise the following documents:

The declaration requesting the approval of the contract for the transfer of industrial property rights, made according to the form set out by the National Office of Industrial Property, in 3 copies, in which the person who requests the approval must be a State organization or an organization having capital contribution from the State if the contract falls into the category defined in 18.1 (i); or a Vietnamese party if the contract falls into the category defined in 18.1 (ii);

Two originals or two copies of the contract, including appendix or appendices (if any); If the contract is made in any language other than Vietnamese, it must be accompanied by the Vietnamese translation;

The original of the title of protection (in case of assignment of ownership over an industrial property object), or a copy of (in case of assignment of the right to use the industrial property object), if the contract to be approved is a sub-contract, it must be accompanied by a copy of the certificate of registration of the exclusive contract on the corresponding sub-contract;

The written agreement made by the co-owners on the transfer of the right if the corresponding industrial property right is under joint ownership; in the event such an agreement cannot be reached, there must be a written report explaining the reasons for the objection of the remaining co-owners;

The business license of the transferee in case of the transfer of ownership right or the transfer of the right to use a trademark;

The voucher of payment of the contract approving fee;

The letter of procuration (if any).

The approval dossier shall be filed to the National Office of Industrial Property in accordance with provisions on the filing of application (point 10 of this Circular).

The time limit for filing the approval dossier is 60 days from the date of signing the contract. Such time limit can be extended if the applicant can give plausible reasons for the delay.

The National Office of Industrial Property shall have to receive the approval dossier in accordance with provisions on receiving application in point 11 of this Circular, with proper amendments, including the documents mentioned in point 11.2 (i): the declaration; the contract for the transfer of industrial property rights; the voucher of fee payment and the letter of procuration.

The National Office of Industrial Property shall have to examine the approval dossier within 2 months from the date of receiving the dossier, in accordance with the following regulations:

If the approval dossier is valid and the content of the contract conform with the regulations, the National Office of Industrial Property shall report the result of examination of the approval dossier and propose to the Minister of Science, Technology and Environment to issue a decision to approve of the contract within 15 days from the date of receiving the report of the National Office of Industrial Property.

If the dossier still has failings and such failings are correctable (except for the cases defined in paragraph c) below); the National Office of Industrial Property shall suggest the person who has filed the dossier to correct such failings within

an appropriate time limit.

The time limit for a person who has filed the dossier to correct the failings of the dossier shall not be accounted for in the time limit for examination of the dossier.

In the event the dossier is invalid for the following reasons, the National Office of Industrial Property shall propose to the Minister of Science, Technology and Environment to refuse approval of the contract for the transfer of industrial property rights:

The person who has filed the approval dossier fails to correct the failings within the time limit set by the National Office of Industrial Property;

The person who has filed the approval dossier is not the one defined in point 19.1 (i);

The transferor is not the owner of the title of protection (in case of the transfer of the ownership over industrial property objects); or is neither the owner of the title of protection nor the transferee of an exclusive license nor entitled to transfer the sub-license with respect to the corresponding industrial property object (in case of the transfer of the right to use industrial property object);

The transferee has no license for trading in goods/services in conformity with the certificate of registration of corresponding trademarks (in case of the transfer of industrial property rights over trademarks)

The corresponding industrial rights are no longer in the period of protection validity; or that industrial property object is in dispute;

There is ground to confirm that the transfer can infringe upon the industrial property rights of a third party;

The contract has a content not in conformity with provisions on the transfer restrictions, and/or has not the required contents as prescribed in Article 38 of the Decree and points 17.2, 17.3, and 17.4 of this Circular.

The contract has no provision on price or the price for the transfer is lower than the minimum price or higher than the maximum price as prescribed;

The contract does not contain all the signatures of the transferor and the transferee and/or the signatures are not certified to be legitimate;

The signatory(ies) to the contract has (have) no competence to sign.

Before proposing the refusal to approve the contract, the National Office of Industrial Property shall notify the applicant of the result of the examination of the approval dossier, the planned refusal, the reason for refusal and the appropriate time limit for the applicant to appeal. If after such time limit the applicant has no protest or makes an unsound protest, the National Office of Industrial Property shall officially propose to the Minister of Science, Technology and Environment to reject the approval of the contract.

The procedures for registration of the contract for the transfer of industrial property rights

20.1. Dossier requesting the registration of the contract (hereinafter referred to as registration dossier) must comprise the following documents:

The declaration to request for the registration of the contract for industrial property right transfer, made in the form set out by the National Office of Industrial Property, 2 copies;

Two originals or two copies of the transfer contract, including appendix(es) thereof (if any): in case the contract is made in any language other than

Vietnamese, there must be the Vietnamese translation attached thereto;

The original of the title of protection (in case of the transfer of ownership over industrial property object); or a copy of such title of protection (in case of the transfer of the right to use industrial property object), if the contract to be registered is a sub-license contract, it must be accompanied by the certificate of registration of the exclusive license contract on the corresponding sub-license;

The written agreement made by the co-owners on the transfer, if the transferred industrial property right is under joint ownership, or if such an agreement cannot be reached, there must be a written report explaining the reasons for the objection of the remaining co-owners;

The business license of the transferee in case of the transfer of the ownership over or the right to use trademarks;

The contract approval decision of the Minister of Science, Technology and Environment (if the contract is required to be approved);

The voucher of payment of contract registration fee;

The letter of procuration (if required);

Where the procedures for both the approval and registration of the contract must be carried out, the documents of the approval dossier already filed shall be considered those of the registration dossier.

20.2. The registration dossier shall be filed and received as the case with the approval dossier (points 19.2 and 19.3 of this Circular).

20.3. The National Office of Industrial Property shall have to examine the registration dossier within 2 months from the date of receiving the dossier. For the contract already approved, the time limit shall be 15 days.

If the registration dossier is valid and the content of the contract conforms with the regulations, the National Office of Industrial Property shall issue a decision to grant the certificate of registration of the contract for the transfer of ownership over industrial property objects, and the title of protection in case of the transfer of trademark with respect to a part of the list of products or services; or the certificate of registration of license contract, and carry out the following procedures:

Making entries into the national register of industrial property and the register of contracts for the transfer of ownership over industrial property objects or the register of license contracts in corresponding cases;

Writing down in the title of protection (in case of the transfer of ownership over industrial property object) and granting the title of protection to the transferee of ownership over trademark with respect to a part of the list of products or services;

Affixing a registration seal on 2 copies of the contract and giving one copy to the registration dossier submitter and keeping the other copy;

Granting to the registration dossier submitter one copy of the certificate of registration of the contract for the transfer of ownership over industrial property objects or of the certificate of registration license contract;

Publicizing the decision on granting the certificate of registration in the Industrial Property Official Gazette;

If the dossier still has failings which are correctable (except for the cases defined in paragraph c) below), the National Office of Industrial Property shall notify the

registration dossier submitter and request him/her to correct such failings within an appropriate time limit.

The time limit for the registration dossier submitter to correct the failings of the dossier shall not be accounted for in the time limit for examination of dossier.

If the registration dossier is improper for the following reasons, the National Office of Industrial Property shall reject the registration of the contract:

The registration dossier submitter fails to correct the failings within the time limit fixed by the National Office of Industrial Property or the correction does not meet the requirement;

The registration dossier submitter is neither the transferor nor the transferee of such transfer contract nor the authorized industrial property representative as prescribed;

The transferor is neither the owner of the title of protection (in case of transfer of ownership over industrial property object); nor the owner of the title of protection nor the transferee of exclusive license entitled to transfer sub-license with respect to industrial property objects (in case of license transfer);

The transferee has no license for trading in the products/services defined in the certificate of registration of corresponding trademarks (in case of the transfer of industrial property ownership over trademarks);

The industrial property right is no longer in the period of protection validity; or is in dispute;

There is ground to confirm that the transfer of industrial property rights shall infringe upon the industrial property rights of a third party;

The contract has a content not in conformity with provisions on transfer restrictions as prescribed in Article 38 of the Decree, and/or has not the required contents as prescribed in points 17.2, 17.3 and 17.4 of this Circular;

The contract does not contain all the signatures of the transferor and the transferee and/or such signature are not certified to be legitimate;

The signatory(ies) to the contract has(have) no competence to sign;

There is no decision on approval of the contract (in case the contract is required to be approved).

Before making the official refusal to register the contract, the National Office of Industrial Property shall notify the registration applicant of the result of examination of the registration dossier, the planned refusal, the reasons therefore and set an appropriate time limit for the registration applicant to make appeal. If after such time limit the applicant does not have any protest or make unsound protest, the National Office of Industrial Property shall announce the refusal to register the contract for transfer of industrial property rights, clearly stating the reasons.

Examination of the application for non-voluntary license

21.1. The non-voluntary license application dossier must comprise the following documents

The declaration to request for the non-voluntary license, made in the form set out by the National Office of Industrial Property;

The documents indicating its special significance on security, national defense, protection of the people's health and environment of the relevant invention, utility solution or industrial design and documents evidencing that the relevant invention, utility solution, industrial design is not used by the industrial property owner (or the person who is transferred the whole right to use such object) without proper reasons or used at a level not satisfying the needs of security, national defense, protection of the people's health and the environment;

The documents showing the capability of the applicant of using the invention, utility solution or industrial design and the conditions which are proper in the applicant's view and already offered but not accepted by the industrial property owner (or the person who is transferred the whole right to use industrial property object) without any proper reason;

The vouchers of payment of fee for granting non-voluntary license;

The letter of procuration (if required).

21.2. The non-voluntary license application dossier must be submitted to the National Office of Industrial Property.

21.3. Upon receiving the non-voluntary license application dossier, the National Office of Industrial Property shall examine the dossier in accordance with provisions of Clause 5 Article 51 of the Decree. The procedures for examination of the non-voluntary license application dossier are similar to those for approval of the contract for the transfer of industrial property rights (point 19 of this Circular).

Chapter IV

HANDLING OF THE INTERNATIONAL APPLICATION OF INVENTION/UTILITY SOLUTION AND APPLICATION FOR INTERNATIONAL REGISTRATION OF TRADEMARKS

The procedures carried out with regard to the National Office of Industrial Property

The regulation on the filing of application and carrying out other relevant procedures before the National Office of Industrial Property mentioned in Clauses 2 and 3 Article 15 of the Decree and Point 3 of this Circular shall also apply to the procedures carried out with regard to the National Office of Industrial Property for international application with respect to inventions, utility solutions or trademarks mentioned in this Chapter.

Handling of international application with respect to inventions/utility solutions under the PCT Agreement.

The National Office of Industrial Property has the responsibility to:

Receive Vietnamese-origin international applications;

Collect fees and remit such fee to the International Bureau and the International Search Office in accordance with provisions of the Agreement;

Check to see whether such prescribed fees are paid in time or not;

Examine and handle Vietnamese-origin international applications in accordance

with provisions of the Agreement;

Determine the object requested to be protected: if the object requested to be protected involves a nation secret, the following procedures shall not be continued and the paid fees shall be returned to the applicant after deducting fees for sending and copying the international application;

Send one copy (dossier copy) of the Vietnamese-origin international application to the International Office and another (reference copy) to the International Reference Office;

Send and receive mail from the applicants and from international offices.

Languages

The Vietnamese-origin international applications to be filed to the National Office of Industrial Property must be made in English or Russian. Each application shall be made in 3 copies.

In cases the number of copies is insufficient, the National Office of Industrial Property shall provide the remaining copies and the applicant shall have to pay fee for copying international application.

The International Search Office and the International Preliminary Examination Office

With regard to Vietnamese-origin international applications, the competent International Search Offices and the International Preliminary Examination Offices shall be the Patent Offices of Australia, Austria, Russia, Sweden and the European Patent Office.

The international application designating Vietnam

If the international application designates Vietnam, the National Office of Industrial Property shall be the designated office. In this case, in order to enter into the national phase, within 21 months from the priority date, applicant must file to the National Office of Industrial Property:

The declaration to request the grant of invention/utility solution patent, made in the form set out by the National Office of Industrial Property, 3 copies;

Three copies of the international application (if the applicant wishes to enter into the national phase before the date of international publication);

The Vietnamese translation of the international application (including: the description, the request for protection (the original thereof already filed; the amended version and explanation under Article 19 of the PCT Agreement), the summary, legends of the drawings), 3 copies;

The national fee.

The application selecting Vietnam

If the application for international preliminary examination selects Vietnam, the National Office of Industrial Property shall be the selected agency. In this case.

and if the selection of Vietnam is made within 19 months from the priority date, in order to enter into the national phase, the applicant must, within 31 months from the priority date, file to the National Office of Industrial Property:

The declaration requesting for the grant of an invention/utility solution patent, made in the form set out by the National Office of Industrial Property, 3 copies;

The Vietnamese translation of the international application (including: the description, the request for protection (the original thereof already filed, the amended version and the explanation under Article 19 of the PCT Agreement), the summary, legends of the drawings), 3 copies;

The Vietnamese translation of the appendice and reports on the international preliminary examination, 3 copies;

The national fee.

Documents requesting the priority right

To be entitled to the priority right, the submitter of an international application must submit to the International Office the necessary documents in accordance with Rule 17.1 (a) of the Regulation on the Implementation of the Agreement; and must submit to the National Office of Industrial Property 3 copies of the Vietnamese translation of such documents within the time limit mentioned in points 23.4 and 23.5 above.

Amendment and supplement to documents in the national phase

Pursuant to Rule 51^{bis} of the Regulation on the Implementation of the PCT Agreement, the applicant must submit the letter of procuracy, the document on the transfer of the right to file application in the international phase (if any)... within 24 months from the priority date in case of the international application designating Vietnam and 34 months in case of the international application selecting Vietnam.

Pursuant to Article 2 and Article 41 of the PCT Agreement, in the national phase the applicant can amend, supplement the documents of the application in accordance with provision of point 16.4 of this Circular.

The time limit for commencing the national phase

The time limit for commencing the handling of the international application designating Vietnam or selecting Vietnam in the national phase shall be calculated from the first day of the 22nd months from the priority date in case Vietnam is selected and such selection is made prior to the end of 19-month period calculated from the priority date, of the applicant does not wish to enter into the national phase prior to the above-mentioned time limit.

Examination of the international application

The international applications shall be examined in terms of their formality and contents in accordance with procedures applicable to the national applications.

International applications assumed to be withdraw

Besides the cases assumed to be withdrawn as provided for in the PCT Agreement and the Regulation on the Implementation of the Agreement, in the event the national fee is not paid to the National Office of Industrial Property or there is no Vietnamese translation after the expiry of the time limit prescribed in points 23.4 and 23.5, the international applications designating Vietnam shall be assumed to be withdrawn.

Fees

The submitter of the Vietnamese-origin international application must pay fees at levels and in accordance with procedures provided for in the Regulation on the Implementation of the PCT Agreement and in accordance with Regulations of the Ministry of Finance, the Ministry of Science, Technology and Environment.

Making and filing the application for international registration of Vietnamese-origin trademark abroad under the Madrid Agreement

24.1. Every individual, legal person or other entity shall have the right to file application for international registration of Vietnamese-origin trademarks under the Madrid Agreement provided that such trademarks have already been registered in Vietnam.

24.2. Application for registration

An application for international registration of Vietnamese-origin trademarks must be made in French and in the form provided free of charge by the National Office of Industrial Property, by way of filling in items for the applicant (except items for the National Office of Industrial Property and the International Office) and must be accompanied with trademark samples. The application must clearly specify the Madrid Agreement member countries where the applicant wish to have his/her trademark protected. The applicant must estimate the total of fees to be paid to the International Office in accordance with the fee index printed in the application form. If the applicant believes that the estimated fee amount is correctly calculated or after being notified by the National Office of Industrial Property of the exact amount of fee to be paid, the applicant shall have to pay such fee to the International Office. In addition, the applicant has to pay additional fee to the National Office of Industrial Property as prescribed.

The application-receiving agency

The application for international registration of trademarks shall be filed to the International Office via the National Office of Industrial Property.

The date on which the National Office of Industrial Property receives the application shall be considered the date the application is received by the International Office if the International Office receives the application within 2 months from such date.

Filing of application to the International Office

After the application is filed to the International Office, all transactions between

the applicant and the International Office must be conducted through the National Office of Industrial Property including the amendment of documents, restrictions on the list of products, assignment of registered rights.

Handling of application for Vietnam-designated international registration of trademarks

25.1. After receiving the notice from the International Office on the application Vietnam-designated international registration of trademarks, the National Office of Industrial Property shall examine the content of such application as is the case with the trademark application directly filed to the National Office of Industrial Property. Within 12 months from the date the trademark is internationally registered, the National Office of Industrial Property shall have to confirm the possibility of the mark being protected. If the trademark is impossible to be protected or partly rejected, the National Office of Industrial Property shall, within the above-said time limit, notify in writing the applicant through the International Office of the reason for the rejection.

Also within the above time limit, if there is no notification of rejection from the National Office of Industrial Property, the trademark shall be protected in Vietnam.

Within 3 months from the date the National Office of Industrial Property sends the notification of rejection, the applicant can file a complaint against the decision of the National Office of Industrial Property, the procedures for making and settling the complaint are similar to those for trademark application directly filed to the National Office of Industrial Property. The National Office of Industrial Property shall notify the applicant and the International Office of the result of the settlement of the complaint.

25.3. The trademark accepted for its protection in Vietnam under the Madrid Agreement shall be publicized on the Industrial Property Office Gazette. The scope (volume) of the protection shall be defined upon the content of registration of such trademark endorsed by the World Intellectual Property Organization (WIPO) and certified by the National Office of Industrial Property.

Chapter V

AMENDMENT OF TITLE OF PROTECTION; MAINTENANCE OF VALIDITY OF TITLE OF PROTECTION OF INVENTION, UTILITY SOLUTION; EXTENSION OF VALIDITY OF TITLE OF PROTECTION OF INDUSTRIAL DESIGN; TRADEMARK AND APPELLATION OF ORIGIN OF GOODS

Amendment of title of protection

The owner of a title of protection is obliged to notify in writing the National Office of Industrial Property of every change in the name address of the owner of title of protection.

The owner of title of protection has the right to request the National Office of Industrial Property to narrow the scope (volume) of industrial design and trademark protection by excluding a number of details of the trademark without substantially changing such trademark; reduce a number of products on the list of

products and/or services specified in the title of protection of mark.

To amend the above-said contents, the owner of the title of protection must file an application for amendment of the title of protection to the National Office of Industrial Property accompanied with (i) the original of the title of protection; (ii) documents certifying the changes in the name and address of the owner of the title of protection; (iii) two sets of photos or drawings of the industrial design plans to be excluded; (iv) 10 samples of the trademark already modified; (v) the voucher of payment of fee for amendment of the title of protection; (vi) the letter of procuration (if required).

The National Office of Industrial Property shall examine the application for amendment of the title of protection within 2 months from the date of receiving the application. If it deems that the application is valid and the amendment neither extends scope (volume) of the protection nor substantially change the nature of the protected object, the National Office of Industrial Property shall amend the title of protection, register and publicize such amendment on the Industrial Property Official Gazette. Otherwise, the National Office of Industrial Property shall notify the applicant of the rejection of amendment and clearly define the reasons therefor.

Maintenance of validity

To have the validity of his/her title of protection of invention, utility solution maintained, the owner of the title must pay the fee for maintenance of validity within 6 months prior to the date of validity expiry. Such fee may be paid later than the above-said time limit, but not later than 6 months from the expiry date. Failing this, the owner of the title of protection shall have to pay an additional 10% of fee for each month of delayed payment.

Extension of validity

To have his/her title of protection extended, within 6 months prior to the date of validity expiry of the title of protection, the owner of the title must file an application therefor to the National Office of Industrial Property.

The application for extension of validity can be filed later than the above-said time limit, but not later than 6 months from the expiry date of validity of the title of protection. Failing this, the applicant must pay a fee for extension of validity and an additional 10% for each month of delayed payment.

The dossier of application for the extension of validity of title of protection must include the following documents:

The declaration to request for extension of validity of the title of protection, made in the form set out by the National Office of Industrial Property, 2 copies;

The original of the title of protection;

The voucher of payment of fee for extension;

The letter of procuration (if required).

The National Office of Industrial Property shall have to examine the application for extension within 2 months from the date of receiving the application. The National

Office of Industrial Property shall issue a decision on extension, note down such extension in the title of protection, register and publicize such extension on the Industrial Property Official Gazette, except for the following cases:

The extension application is invalid, or filed not in accordance with prescribed procedures;

There is ground to confirm that the owner of certificate of the right to use the appellation of origin of goods does not use such trademark or appellation of origin of goods or has not used such object for the last 5 consecutive years prior to the expiry date of the title of protection without plausible reasons;

The applicant for extension is not the owner of the title of protection of the corresponding trademark appellation of origin of goods or industrial design.

If the application falls into one of the above-said cases, the National Office of Industrial Property shall issue a notification of refusal of extension together with the clear reasons.

Chapter VI

THE PROCEDURES FOR GRANTING REPRESENTATION LICENSE

The dossier of application for representation license

A representation license shall be granted by the National Office of Industrial Property after considering the dossier of application for the representative license as prescribed in points 29.2 and 29.3 below. The applicant shall have to pay the prescribed fee.

The dossier of application for the certificate of industrial property representation service organization shall comprise:

The application for the certificate of industrial property representation service organization, with a proposed list of industrial property representatives of the organization;

The copies of the operating statute and certificate of business registration;

The copy of the decision on appointment to the leading posts of the organization or a written document signed by the head of the organization to authorize a member of the organization on the above-said proposed list to represent the organization;

The table of service fees for the industrial property representation of the organization after being registered in accordance with regulations on management of fees and charges;

The voucher of payment of fee for grant of representation license.

The dossier of application for the certificate of industrial property representation service organization must be filed together with dossiers of application the industrial property representative cards of individuals on the above-said proposed list.

The dossier of application for industrial property representative card shall

comprise:

The application for the industrial property representative card, with the certification of the permanent address of the applicant by the People's committee of ward, commune or township;

A copy of the university diploma;

A copy of the certificate of graduation from an official industrial property training course; or a certificate of working experience and earlier assignments as prescribed in Clause 1 Article 58 of the Decree;

A copy of the certificate of having passed the examination on current industrial property legislation of Vietnam issued by the National Office of Industrial Property;

The voucher of payment of fee for application filing.

Consideration of the dossiers of application for representation license

Within one month from the date of receiving the dossier of application for a representation license, the National Office of Industrial Property shall have to consider and decide whether or not to grant the representation license. In case of refusal, the National Office of Industrial Property shall have to notify the applicant of the reasons therefor. In case of grant, and after the applicant pays the fee for the grant of representative license, the National Office of Industrial Property shall have to carry out the following procedures:

Granting the representation license;

Making entry of the grant of the representative license into the Register of Industrial Property Representatives;

Publicizing the grant of the representative license on the Industrial Property Official Gazette.

Chapter VII

FINAL PROVISIONS

Complaints

If the applicant disagrees with the decision related to the handling of the application, as well as the approval and registration of contract for the transfer of industrial property rights, consideration of application for grant of non-voluntary license, the extension of title of protection, grant of representative license, he/she shall be entitled to lodge a complaint or protest in accordance with the order and procedures prescribed in Clauses 2, 3 and 4 Article 27 of the Decree.

Handling of applications filed during the period from July 1st, 1996 to the date when this Circular takes effect

The applications filed during the period from July 1st, 1996 to the date when this Circular takes effect are allowed to use document forms in accordance with Circular No. 1134/SC of October 17, 1991 of the Ministry of Science, Technology and Environment guiding the implementation of Decree No. 84-HDBT of March 20, 1990 of the Council of Ministers, and shall be handled in accordance with this Circular. The time limit for handling such applications shall be extended to equal

to the time period from the date of filing the application to the date when this Circular takes affect.

Document forms and regulations on examination of applications

The Director of the National Office of Industrial Property shall have to issue necessary document forms related to the application, the approval and registration of contracts for the transfer of industrial property rights, and issue the Regulation on examination of applications.

Implementation

This Circular replaces the following documents of the State Committee for Science and Technique and the Ministry of Science, Technology and Environment:

Chapters II, III and IV of Circular No. 1134/SC of October 17, 1991 guiding the implementation of Decree No. 84-HDBT of March 20, 1990 of the Council of Ministers;

Circular No. 437/SC of March 19, 1993 providing additional guidance on the registration of trademarks;

Circular No. 163/TT-SHCN of April 15, 1994 guiding the implementation of the regulations on approval and registration of license contacts;

Circular No. 238/TT-SHCN of May 2, 1994 providing guidance on the filing and handling of international applications for protection of invention, utility solution under the Agreement on Patent Cooperation in Vietnam;

Decision No. 199/QD of December 21, 1992 stipulating regulations on industrial property representatives.

This Circular takes affect 15 days after its signing.

**Minister of Science, Technology and Environment
PHAM GIA KHIEM**

CIRCULAR NO. 3055/TT-SHCN ON December 31st, 1996

Circular of Ministry of Science, Technology and Environment for guiding the implementation of the provisions set forth in Decree No 63/CP with regard to procedures for establishment IP right.

Pursuant to Decree No. 63-CP of October 24, 1996 of the Government detailing the provisions on industrial property;

The Ministry of Science, Technology and Environment issues this Circular to stipulate in details and guide the implementation of the procedures for making, filing and examining applications for titles of protection, the procedures for approving and registering contracts for the transfer of industrial property right, the procedures for considering applications for non-voluntary licenses, the procedures for amending and extending the validity of titles of protections for international registration of inventions, utility solutions under the PCT Agreement and applications for international registration of trademarks under the Madrid Agreement and the procedures for the aratina of industrial property

representative licenses.

Chapter 1

GENERAL PROVISIONS

Terminology

The terms used in this Circular shall be construed as follows:

“The Decree” refers to Decree No. 63-CP of October 24, 1996 of the Government detailing the provisions on industrial property;

“Application” refers to an application for title of protection;

“Invention application”, “utility solution application”, “industrial design application”, “trademark application” and “appellation of origin application” refer to an application for an invention patent, an utility solution patent, an industrial design patent, a certificate of registered trademark and a certificate of the right to use the appellation of origin of goods, respectively;

“International application” refers to an application for international registration of an invention or an utility solution filed in accordance with the PCT Agreement;

“International registration application” refers to an application for international registration of a trademark filed in accordance with the Madrid Agreement on the international registration of trademark;

“Trademark” refers to a “trademark” as provided for in Article 2 of the Decree;

“The subject named in document” is an individual, a legal person or an organization, that makes, issues or signs to certify the validity of a document.

Other terms shall be construed in accordance with the Decree.

Certification of documents:

Certification of signatures:

In the process of filing the procedures for the establishment, maintenance, extension, execution, transfer ... of industrial property rights as prescribed in this Circular, the signature of the person named in papers and/or documents used in transaction with the competent agencies, must be certified that it is the true signature of such person and in case where the signatory is the representative of the subject named in the document, he/she must be certified to be authorized to represent the subject named in document, in accordance with the following stipulations:

For a subject having a lawful seal, the certification of signature shall be made affixing his/her/its seal in the signature;

For Vietnamese subject having no lawful seal, the certification of signature must be done at the State Notary Public or the office of the administration of the locality where the subject resides or has its head office;

For a foreign subject having no lawful seal, the certification of signature must be done at the Notary Public or at agency having equivalent competence.

Certification of copies:

Every document which is a copy of any form must be certified that it is duly copied from the original as prescribed in Paragraph b) before being used as official document in the process of filing the procedures related to industrial property at the competent agencies.

A document shall be considered a true copy of an original document if such copy is certified by one of the following agencies: (i) the notary public, (ii) the People's Committee or a competent agency, (iii) the State agency or social organization which has made the original document: if the copy has many pages, each page must be certified or every two consecutive pages must be sealed.

Certification of translations:

Any Vietnamese translation of a document must be certified that it is translated verbatim from the original as prescribed in Paragraph b) before being used as official document in the process of filing the procedures related to industrial property at the competent agencies.

The certification of a translation may be done in one of the following ways: (i) public notary; (ii) certification of the subject named in the original document; (iii) certification of all parties to the contract or agreement (if the original document is a contract or an agreement); (iv) recognition by the agency competent to use such translation in the process of carrying out the relevant procedures.

The person acting on behalf of the subject to carry out the industrial property procedures

Only persons mentioned in points 3.2 and 3.3 below shall be entitled to act on behalf of the subject to file application, supplement and amendment to the documents of the application; receive and reply to the comments of the National Office of Industrial Property related to the application; to decide the continuation or suspension of the process of requesting the protection; receive the title of protection; undertake the maintenance, amendment and extension of the validity of the title of protection as well as other industrial property procedures with regard to the National Office of Industrial Property and the competent agencies.

The National Office of Industrial Property shall be entitled to transact only with the above-mentioned persons and such transactions shall be considered the official transactions with the subjects.

For entities who are entitled to directly file applications and conduct relevant procedures provided for in Clauses 2 and 3.a. Article 15 of the Decree, the following persons shall be entitled to conduct on behalf of the subjects the activities mentioned in point 3.1 above:

The very individual or his/her representative at law (if the subject is an individual);

The representative at law of the subject: an individual who is a member of the subject and authorized by the representative at law of the subject to represent; the head of the representative office or branch of the subject, or a person who is authorized by the representative at law of the subject (if the subject is a legal

person or an entity of other type);

The head of the representative office in Vietnam of a foreign subject, who is authorized by such subject to represent it; the representative at law of an enterprise established in Vietnam with 100 percent of investment capital of the foreign subject, who is authorized by such subject to represent it;

A person meeting one of the conditions prescribed in paragraphs (i), (ii) and (iii) above who is also one of the individuals or belongs to one of the legal persons or other subjects – if the subject includes many individuals, legal persons or other subjects – and if such person is authorized by such individuals, legal person and other subjects to represent them.

For subjects that are entitled only to file applications and carry out relevant procedures through an Industrial Property Service Organization prescribed in Clause 3.b) of Article 15 of the Decree as well as any other subject carrying out the said procedures through an Industrial Property Service Organization, only those who have been granted Cards of Industrial Property Representative, belong to Industrial Property Service Organizations and have the written authorization of the subjects can conduct activities mentioned in point 3.1 above.

Authorization to carry out industrial property procedures

An authorization to carry out industrial property procedures must be made in writing (letter of procuration), which must include the following contents:

(i) The name (surname), full address, telephone number, fax number (if any) of the authorizing party; (ii) The name (surname), full address, telephone number, fax number (if any) of the authorized party; (iii) the scope authorization (the tasks to be performed by the authorized party on behalf of the authorizing party); (iv) the term of authorization; (v) the place and date of making the letter of procuration; (vi) the signature of the person who makes the letter of procuration (certified in accordance with the provisions on the certification of signatures).

The authorized party must be an individual or organization entitled to carry out industrial property procedures as prescribed in points 3.2 (ii), (iii), (iv) and 3.3 of this Circular.

Any change in the scope of authorization and termination of the authorization before schedule must be reported in writing to the National Office of Industrial Property.

In the authorization scope stated in the letter of procuration includes many separate procedures, the authorized party can submit the copy of the letter of procuration, provided that he/she has submitted the original letter of procuration to the National Office of Industrial Property and indicated the number and date of submitting the dossier containing the original of the letter of procuration.

Chapter II

APPLICATIONS AND HANDLING OF APPLICATIONS

General requirements regarding the application

The application must ensure the consistency as required in Clause 2, Article 11 of the Decree and satisfy the general formality requirements mentioned in point 5.2 below.

The application must satisfy the following general formality requirements:

Each application shall be filed for only one title of protection, the type of title of protection to be granted must conform with the industrial property object described in the application;

All documents of the application must be made in Vietnamese, except for documents that can be made in other languages as stipulated in point 5.3 below;

All documents of the application must be laid out vertically and on one side of A4-format (210 mm × 297 mm) paper, with four margins on all sides, each 20 mm wide, except for documents added to the application for reason of necessity to support and further illustrate the application the sources of which are not for inclusion into the application, therefore may be otherwise laid out;

For documents that need to be made according to set forms, such forms must be filled with items at the proper places;

Each kind of document must have the required number of copies; if a document has many pages, each page must be numbered at its center-top position with Arabic numerals;

All documents must be clearly typewritten or printed with a permanent ink without any erasure or correction.

The following documents may be made in any language other than Vietnamese language but must be translated into Vietnamese:

The letter of procuration (if any);

Documents certifying the lawful right to file application, if the applicant is given such right by another person (inheritance certificate, certificate or agreement on the transfer of the application filing right, including the transfer of the application already filed; contract for job assignment or labor contract...);

Document on assignment of the priority right (if the application has a request for the priority right and such right is given by another person);

Relevant documents evidencing the basis of enjoying the priority right (the first application exhibition certificate);

The original documents or copies thereof included in the application to support the application.

Requirements regarding invention/utility solution application

In addition to the general requirements prescribed in point 5 of this Circular, invention/utility solution application must satisfy the requirements prescribed in this point.

The application must comprise the following documents:

The declaration requesting the grant of invention/utility solution patent, made

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under the form issued by the National Office of Industrial Property, 3 copies;
The invention/utility solution description paper (hereinafter referred to as the description paper), 3 copies;
The request for protection, 3 copies;
Drawings, diagrams, calculation tables ... (if required) to further clarify the nature of the technical solution indicated in the description, 3 copies;
The summary of the invention/utility solution, 3 copies;
The document certifying the lawful right to file application if the applicant is entitled to such right from another person (inheritance certificate, certificate or agreement on the transfer of the application filing right; the contract on work assignment or labor contract...), 1 copy;
The letter of procuration (if required), 1 copy;
The copy of the first application or exhibition certificate if the application has a request for priority right under the international agreement, 1 copy;
The vouchers of payment of application filing fee and application publicizing fee, 1 copy;

The documents mentioned in point 6.1 above must be submitted together. For the following documents, they can be submitted within 3 months from the date of filing the application:

The Vietnamese version of documents 6.1 (ii), 6.1 (iii) and 6.1 (v), if the application includes an English, French or Russian version;
The original of document 6.1 (vii) if the application includes a copy thereof;
The document 6.1 (viii), including its Vietnamese translation.

The description paper must totally reveal the nature of the technical solution requested to be protected. The description paper must provide information to such an extent that based on which a person with the average professional level in the corresponding technical area can apply such solution.

The description paper must clarify the novelty, creativity (if the protection object is an invention) and applicability of the technical solution requested to be protected.

The description paper must include the following contents:

The international criteria for invention classification (under the Strasbourg Agreement);
The name of the technical solution;
The area in which the technical solution is applied or involved;
The technical situation of the above-said area at the time of filing the application (the technical solutions already known);
The nature of the technical solution;
A brief description of the attached drawings (if any);
A model of application of the technical solution;
The obtainable benefits (the effectiveness of the technical solution).

The protection request aims to determine the scope (volume) of the protection of invention/utility solution. The protection request must be briefly and clearly presented in conformity with the description and drawings, in which the new characters of the technical solution requested to be protected must be clarified.

A summary of the invention/utility solution aimed at briefly publicizing the nature of the invention/utility solution. The summary must reveal the essentials of the nature of the technical solution for information purpose.

The requirements with respect to presentation and contents of the description paper, the drawings, the protection request, the summary of the invention/utility solution and other documents of the invention/utility solution application shall be prescribed by the National Office of Industrial Property.

Requirements regarding the industrial design application.

In addition to the requirements mentioned in point 5 of this Circular, the industrial design application must also satisfy the requirements prescribed in this point.

The application must comprise the following documents:

The declaration requesting the grant of industrial design patent, made in the form set out by the National Office of Industrial Property, 3 copies;

The description of the industrial design, 3 copies;

A set of photos or drawing of the industrial design, 6 copies;

The document certifying the legal right to file application, if the applicant is entitled to such right from another person (certificate of inheritance right; certificate or agreement on the transfer of application filing right; contract on work assignment or labor contract), 1 copy;

The document certifying the label ownership right if the industrial design includes a label, 1 copy;

The letter of procuration (if required);

A copy of the first application or exhibition certificate if the application has a request for priority right under the international agreements, 1 copy;

The vouchers of payment of application filing fee and application publicizing fee, 1 copy.

The documents mentioned in point 7.1 above must be submitted at the same time. The following documents may be submitted within 3 months from the date of filing the application:

A Vietnamese version of 7.1 (ii) document, if the application includes an English, French or Russian version;

Document 7.1 (v);

The original document 7.1 (vi), if the application includes a copy thereof;

Document 7.1 (vii), including the Vietnamese translation thereof.

The description of the industrial design must fully and clearly indicate the nature of the industrial design and must be in conformity with the set of photos or

drawings and include the following contents:

The name of the industrial design;

The international index for the classification of industrial designs (under the Locarno Agreement);

The area of use of the products made upon the industrial design;

Similar industrial designs already known;

A list of photos or drawings;

The nature of the industrial design, clearly indicating the main external shaping features of the industrial design requested to be protected as distinguished from those of the industrial designs already known.

The set of photos or drawings must fully expose the nature of the industrial design as described in order to determine the scope (volume) of protection of such industrial design.

The photos/drawings must be clear and sharp, not causing any confusion between the products made upon the industrial design requested to be protected and other products.

All photos/drawings must be made on the same scale. The size of each photo must not be smaller than 90 mm × 120 mm and not larger than 210 mm × 297 mm.

The requirements regarding the description and the set of photos/drawings of the industrial design shall be prescribed by the National Office of Industrial Property.

Requirements regarding the trademark application.

In addition to the general requirements mentioned in point 5 of this Circular, the trademark application must satisfy the requirements prescribed in this point.

The application must comprise the following documents:

The declaration requesting the grant of certificate of registered trademark, on which the trademark sample is fastened, made in the form set out by the National Office of Industrial Property, 3 copies;

The regulation on the use of trademark in case the trademark requested to be protected is a collective trademark, 1 copy;

A sample of the trademark, 15 copies;

A copy of the document certifying the lawful business right (business license or certificate of business registration, etc.), 1 copy;

The document certifying the lawful right to file application, if the applicant is entitled to the application filing right from another person (inheritance certificate or agreement for the transfer of application filing right, including the application already filed; contract for work assignment or labor contract...), 1 copy;

The letter of procuration (if required);

A copy of the first application or exhibition certificate if the application has a

request for enjoying the priority right under international agreements, 1 copy;

The document certifying the origin, awards, medals, in case the trademark contains such information , 1 copy;

The permit(s) of the competent agency, in case the trademark is printed with symbols, proper names, etc., as prescribed in point g Clause 2, Article 6 of the Decree, 1 copy;

The voucher of payment of application fee, 1 copy.

The above-mentioned documents must be submitted at the same time. The following documents can be submitted within 3 months from the date of filing the application:

The original of document 8.1 (vi), if the application includes a copy thereof;

Document 8.1 (vii), including the Vietnamese translation.

The description of the trademark in the declaration must clarify the particularities of the trademark, clearly indicating all constituent parts and overall significance of the trademark. If the trademark contains non-Vietnamese characters and words, their pronunciation must be clearly defined (transcribed into Vietnamese) and if such words have meanings, they must be translated into Vietnamese.

In case the letters, characters or words requested to be protected are displayed in geometric forms as distinctive elements of the trademark, the geometric form of such letters, characters and words must be described.

In case the trademark includes numerals other than Arabic or Roman numerals, such numerals must be converted into Arabic numerals.

In case the trademark is composed of many separate parts, which are, however, displayed at the same time on one product, the position of each part of such trademark on the product or the product's container must be clearly indicated.

The list of products, services bearing the trademark described in the declaration must be in line with or identical to the kinds of products, services specified in the business license or in the certificate of business registration and must be classified in groups in accordance with the table of international classification of products and services (under the Nice Agreement).

The trademark sample attached to the declaration as well as other trademark samples must be clearly displayed with a size not exceeding 80 mm x80 mm and the distance between the two closest points must be shorter than 15 mm.

In case of a request for protection of colors, the trademark sample must be displayed in the exact colors requested to be protected.

If there is no request for protection of colors, all mark samples must be displayed in black and white.

Requirements regarding the appellation of origin of goods application.

In addition to the general requirements stipulated in point 5 of this Circular, the appellation of origin of goods application must satisfy the requirements stipulated in this point.

The application must comprise the following documents:

The declaration requesting for the grant of certificate of the right to use the appellation of origin of goods, made under the form set out by the National Office of Industrial Property, 3 copies;

The copy of the document certifying the lawful business right (the business license, certificate of business registration, etc.), 1 copy;

The explanation of the peculiar quality of the products bearing the appellation of origin of goods, with the certification by a competent State agency, 1 copy;

The document of the competent agency certifying that the products produced or traded by the applicant have peculiar characteristics and quality and are produced on the territory corresponding to the appellation of origin of goods (in conformity with the explanation in document (iii)), 1 copy;

A copy of the title of protection of the appellation of origin of goods granted by the country of origin, or a document of the country of origin certifying that the right of the applicant to use the appellation of origin of goods is currently protected in the country of origin (in case the appellation of origin of goods comes from a foreign country), 1 copy;

A map of the territory corresponding to the appellation of origin of goods, in which the place where the applicant produces or conducts business is indicated, 1 copy;

The letter of procuration (if required), 1 copy;

The voucher of payment of the application fee, 1 copy.

If the applicant applies only for the certificate of the right to use an appellation of origin of goods which has previously been registered, the application can be filed without documents (iii) and (iv). If the appellation of origin of goods is from a foreign country, the application can be filed without documents (ii), (iii) and (vi).

The above-mentioned documents must be submitted at the same time. The original of document 9.1 (vii) can be submitted within 3 months from the date of filing the application if the application includes a copy of the original.

The agency competent to certify the particularities of the products bearing the appellation of origin of goods and certify that the products produced by the applicant have such particularities shall be the product quality control agencies at the central level or of the locality indicated in the appellation of origin of goods.

Filing the application

The application may be filed at the National Office of Industrial Property or at any other application receiving places set up by the National Office of Industrial Property. The application may also be sent by registered mails through the postal service to the above-said application-receiving places.

Receiving the application

Upon receiving the application, the National Office of Industrial Property shall have to: (i) check the list of documents specified in the declaration; (ii) affix a seal on the declaration certifying the date the application arrives at the National Office of Industrial Property; (iii) make notes on the disparity between the list of documents specified in the declaration and the number of documents actually attached to the application; (iv) conduct preliminary examination of the application to consider whether or not to accept the application in accordance with point 11.2 below; (v) send to the applicant a declaration already affixed with the seal certifying the arrival date of the application, the serial number of the application and the result of the check on the list of documents, with name and signature of the application receiver; (the above-said declaration shall substitute the receipt of the application).

The National Office of Industrial Property shall not accept the application if it finds that the application has one of the following failings:

The application does not include one of the following required documents: the declaration, which must contain the trademark sample and the list of products, services (in case of a trademark application); the appellation of origin of goods and the type of goods (in case of an appellation of origin of goods application), the description of the invention/utility solution, the request for protection (in case of an invention/utility solution application); the description of the industrial design and the set of photos and drawings of the industrial design (in case of an industrial design application), the letter of procuration (if required), the voucher of payment of fees;

The form of protection (the type of title of protection requested to be granted) is not in conformity with the industrial property object described in the application;

The declaration has no signature or/and seriously erased or modified.

If the application is not accepted, the National Office of Industrial Property shall notify the applicant of the reason(s) for non-acceptance. In case of an application sent by post, the National Office of Industrial Property shall notify in writing within 15 days from the arrival date of the application; the National Office of Industrial Property shall not have to send back the application's documents to the applicant, but shall have to return the fees already paid together with the unaccepted application after deducting the expenses for the return of fees.

Handling of the documents of the application already accepted

After being accepted, the application shall be handled as follows:

A set of documents comprising the necessary documents shall be set apart to maintain the original state of the application (called "dossier set" of the application);

All remaining documents shall be made into a set used for examination in accordance with provisions of this Circular.

Formality examination

After being handled in accordance with point 12 of this Circular, the application

shall undergo the formality examination as prescribed in this point.

The application shall be considered improper if it has one of the following failings:

The application is made in any language other than Vietnamese, except the case provided for in point 5.3 of this Circular;

The declaration lacks information on the author (of an invention, utility solution or industrial design) and on the applicant, who fails to sign thereon, or whose signature is not certified or the information on the representative is erased or corrected;

There is ground to confirm that the applicant is not entitled to file the application;

The application is filed not in accordance with Article 15 of the Decree;

The description, the summary, the request for protection of invention, utility solution, the description of industrial design are made in English/French/Russian language but the applicant fails to add the Vietnamese versions thereof within the time limit prescribed in Points 6.2 and 7.2 of this Circular;

The letter of procuration is only a copy and the applicant fails to add the original within the time limit prescribed in points 6.2, 7.2, 8.2 and 9.2 of this Circular;

There exist in the application failings mentioned in point 13.3 below which invalidate the application, and though the National Office of Industrial Property has requested it, the applicant does not made the correction or the correction is not up to requirement;

The objects described in the application are objects which shall not be protected by the State as prescribed in Clause 4 of Article 4, Clause 3 of Article 5, Clause 2 of Article 6 and Clause 2 of Article 7 of the Decree.

Handling the failings of the application in the formality examination period

If there are in the application the following failings, the National Office of Industrial Property shall notify the applicant thereof and within 2 months from the date the notification is made, the applicant shall have to correct such failings:

One of the required documents is insufficient in the number of copies;

The application fails to satisfy the requirement for consistency;

The application fails to satisfy the requirement for presentation;

The trademark application fails to clearly indicate the type of trademark to be registered, is filed without description of the trademark, or the products on the list are not grouped or improperly grouped;

The information on the applicant is not consistent in separate documents or is erased and corrected;

The application fees are not paid in full.

The applicant can, on his/her own initiative, amend and/or supplement the documents of the application but is not allowed to extend the scope (volume) of the protection and change the nature of the industrial property object described in the application and must pay the prescribed fees. If the amendment extends the scope (volume) of the protection or change the nature of the object, the applicant shall have to file a new application and all procedures shall have to commence from the beginning.

Determination of the date of valid application filing.

The date of valid application filing shall be determined as follows:

With regard to application having no failings stipulated in point 13.2 above, the date of valid application filing shall be the date the application arrives at the National Office of Industrial Property indicated in the seal of receiving the application on the declaration;

With regard to application having no failings stipulated in point 13.3 above, and failings, which have been corrected within the prescribed time limit, the date of the valid application filing shall be the date the application arrives at the National Office of Industrial Property indicated in the seal of receiving the application. If the failings are corrected after such time limit, the date of valid application filing shall be the the date all the failings have been corrected to make the application valid.

Determination of the priority date

The priority date of the application shall be determined as follows:

If the application does not claim the priority right, the priority date shall be the date of valid application filing;

If the application claims the priority right, the priority date shall be the date in such claim and adopted by the National Office of Industrial Property.

The National Office of Industrial Property shall notify the applicant of the result of formality examination of the application in accordance with the following regulations:

If the application is considered valid, the National Office of Industrial Property shall send to the applicant a notification of acceptance of the application, clearly stating therein the name, address of the applicant; the name of the industrial property service organization (if the application is filed through that organization); the name of the object described in the application, the date of valid application filing, the priority date; the serial number of the application; the existing failings that have to be corrected by the applicant and the time limit for the correction thereof. If the applicant fails to correct within such time limit, the consideration of the application shall not be continued;

If the application is considered invalid, the National Office of Industrial Property shall send to the applicant a notification of non-acceptance of the application clearly stating therein the name, address of the applicant, the name of the industrial property service organization (if the application is filed through that organization); the date the application arrives at the National Office of Industrial Property, the name of the object described in the application; and the reasons for the non-acceptance of the application (the reasons why the application is considered invalid);

If there still exist in the application failings mentioned in point 13.3 above, the National Office of Industrial Property shall send to the applicant a notification of the result of the formality examination of application clearly stating therein the name, address of the applicant, the name of the industrial property service organization (if the application is filed through that organization); the date the application arrives at the National Office of Industrial Property; the name of the

object described in the application, the failings that have to be corrected and the time limit set for the correction.

The time limit for the formality examination is 3 months from the date the application arrives at the National Office of Industrial Property indicated on the application-receiving seal; For an application with a document or documents being filed late as described in points 6.2, 7.2, 8.2 and 9.2, the time limit for the formality examination is 3 months from the date such document is added to the application. Prior to the expiry of the above time limit, the National Office of Industrial Property shall have to conclude the formality examination and notify the applicant in accordance with provisions of point 13.7 above.

Announcement of valid application

All invention, utility solution, industrial design applications which are considered valid shall be announced by the National Office of Industrial Property on the Industrial Property Official Gazette within the following time limit:

An invention or utility solution application shall be announced in the 19th months calculated from the priority date, except the cases provided for in points b), c) and d) below:

In case of a request for early announcement, the application shall be announced within one month from the date the National Office of Industrial Property receives the request for early announcement or at a later date as requested;

For an invention, utility solution application, if there is a written request for content examination filed before the date the application is properly accepted, the application shall be announced within one month from the date of acceptance of the valid application;

For an invention or utility solution application, if there is a written request for content examination filed after the date the application is properly accepted but prior to the expiry of a time limit of 18 months calculated from the priority date, the application shall be announced within one month from the date the National Office of Industrial Property receives a request for content examination;

An international application and industrial design application shall be announced in the second month from the date of acceptance of the valid application, except for cases mentioned in point b) above.

The information related to a valid application shall be announced on the Official Gazette and include: all information on the valid application contained in the application acceptance notification, excluding the information on the failings which must be corrected; the summary of the invention or utility solution accompanied by drawings if necessary; one or a number of drawings and photos of the industrial design.

Every one can have access to more detailed information on the nature of the object described in the application announced on the Industrial Property Official Gazette, or can request the National Office of Industrial Property to provide such information and he/she shall have to pay the charges for information supply in accordance with regulations.

Request for examination of content of invention or utility solution

Within 42 months from the priority date of the invention application and 36 months from the priority date of the utility solution application, the applicant or any third party can request the National Office of Industrial Property to undertake examination of content of such invention or utility solution.

The person who requests the examination of content of an invention or utility solution filed after the announcement of the application shall be announced on the Industrial Property Official Gazette within one month from the date of receiving the written request for examination and the applicant shall be notified thereof.

The request for examination of content of an invention or utility solution shall have to pay prescribed fees.

The request for examination of content of an invention or utility solution filed after the announcement of the application shall be announced on the Industrial Property Official Gazette within one month from the date of receiving the written request for examination and the applicant shall be notified thereof.

The request for examination of content of an invention or utility solution filed before the announcement of the application shall be announced together with the application in accordance with points 14.1 c) and d) of this Circular.

15.3. Except for the case where the request for content examination is written in the declaration by the applicant him-herself, the request for examination of content of an invention or utility solution must be made in writing, clearly stating therein the name, address of the person who requests: the serial number and the date of filing the application of invention or utility solution the content of which is requested to be examined; the name, address of the applicant, the name of such invention, utility solution, and must be accompanied by the receipt or voucher of payment of examination fee.

16. Examination of the content of the application

16.1. The examination of the content of the application shall be undertaken by the National Office of Industrial Property in accordance with this point with respect to:

All trademark, industrial design and appellation of origin of goods applications if such applications have been properly accepted and the applicants have paid content examination fees

All international registration applications, and

Invention or utility solution applications including international applications, which have been properly accepted and if there are requests for content examination filed at the National Office of Industrial Property within the time limit prescribed in point 15 of this Circular.

16.2. The content examination aims to determine the possibility of protection of the object described in the application in accordance with the criteria for the protection or to determine the scope (volume) of the protection.

16.3. Within the time limit for content examination application, the National Office of Industrial Property shall have to notify the applicant and the person who has

requested the content examination of the result of the content examination in accordance with the following regulations:

If the industrial property object is not up to the criteria for protection, the notification of result of the content examination must clearly state the reason(s) for refusal to grant the title of protection and set the time limit of 2 months from the date of notification for the application to appeal;

If the industrial property object is up to the criteria for protection but the protection scope (volume) must be narrowed or the application still has failings, the notification of the result of the content examination must clearly state such matters and set the time limit of 2 months from the date of notification for the applicant to appeal or correct the failings;

If the object is up to the criteria for protection, including the case mentioned in point b) above, the notification of the result of the content examination shall request the applicant to pay the fee for announcement of title of protection, the fee for registration and grant of title of protection and the fee for maintenance of the first year's validity (with respect to inventions and utility solutions).

Within the content examination time limit, the applicant can, on his/her own initiative, amend and/or supplement the documents included in the application and shall have to pay the prescribed fees.

The National Office of Industrial Property can request the applicant to amend and/or supplement documents within the set time limit. If the applicant fails to amend and/or supplement at the request of the National Office of Industrial Property without plausible reasons, the application shall be assumed withdrawn.

The amendment and/or supplement must not change the nature of the object or extend the scope (volume) of the protection defined in the application.

The content examination time limit shall be: (i) 18 months for an invention application, 9 months for a utility solution application calculated from the date of receiving the request for content examination if such request is filed after the announcement of the application, or from the date of announcing the application if the request is filed before the announcement of the application; (ii) 9 months for an industrial design application and trademark application from the date of signing the notification of acceptance of the valid application; (iii) 6 months for an appellation of origin of goods application calculated from the date of signing the notification of acceptance of the valid application.

If during the application content examination, the applicant wishes to, or at the request of the National Office of Industrial Property, amends and/or supplements documents, the content examination time limit can be extended to cover the period for the amendment and/or supplement.

Prior to expiry date of the content examination time limit, the National Office of Industrial Property shall have to notify the applicant and the person requesting the examination of the result of the content examination in accordance with point 16.3.

Chapter III

TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Contract for the transfer of industrial property right

A contract for the transfer of industrial property right is a contract for transferring the ownership over an industrial property object or a contract for transferring the right to use an industrial property object.

A contract for the transfer of the ownership over an invention, utility solution, industrial design or trademark must include the following main contents:

- The name (surname) and full address of the transferor and the transferee;
- The basis for the transfer (title of protection already granted or transferred to the transferor);
- The object of the transfer (the whole ownership right over the whole volume of the protection of the industrial property object or over part of the volume of trademark protection or part of the list of goods and services);
- The price for the transfer;
- The rights and obligations of each party, including corresponding obligations which must not contravene Article 40 of the Decree;
- The conditions for the amendment, termination or invalidation of the contract;
- The method of settling complaints and disputes;
- The signing date and place;
- The signature of the parties or their authorized representatives, together with the names, titles of the signatories and certification of signatures.

The contract for the transfer of the right to use the invention, utility solution, industrial design or trademark ("License contract") must include the following contents:

- The names (surname) and full address of the license transferor and transferee;
- The basis for transferring the license (the title of protection already granted to the license transferor or the exclusive license contract);
- The scope of the license, which includes:
 - The type of license (exclusive/non-exclusive);
 - The object of license determined by the restrictions on the right to use (the protected acts of use) and the restrictions on the industrial property object (the volume of protection of the industrial property object);
 - The territorial restriction (the Vietnamese territory);
 - The duration (the duration of protection of industrial property object).

In case of a sub-license, the license scope must fall within the license scope of the exclusive license contract on the corresponding sub-license;

- The license price;
- The rights and obligations of each party, including corresponding obligations which must not contravene Article 40 of the Decree;
- The conditions for the amendment, termination or invalidation of the contract;

The method of settling complaints and disputes;

The signing date and place;

The signatures of the parties or their authorized representatives, together with the name and title of the signatories and certification of the signatures.

The license contract must not contain any unjustifiable provision on restrictions on the rights of the license transferee, especially the restriction provisions not derived from the rights of the license transferor over the industrial property object or not for the purpose of protecting such rights, such as:

Provisions directly or indirectly restricting the export of products manufactured under the license to territories where the license transferor is not the owner of corresponding industrial property object;

Provisions compelling the transferee of a trademark license to purchase the whole or part of the materials, components or equipment of the license transferor or of a person appointed by the license transferor, without aiming to ensure the quality of products manufactured by the transferee;

Provisions forbidding the license transferee to modify the industrial property object (except trademark), or compelling the license transferee or the right to file application for industrial property protection or industrial property right over such modifications.

Provisions forbidding the license transferee to appeal against the validity of the industrial property right, or the license transferor's right to transfer license.

If the transfer of industrial property right is part of another contract, the content of the industrial property right transfer shall be made into a part distinct from the other parts of the contract and shall comply with the provisions of this Point.

Types of contracts for the industrial property right transfer which must be approved and registered

18.1. According to Clause 5 Article 38 and Clause 5, Article 62 of the Decree, all contracts for the transfer of ownership over or the right to use industrial property object in the following cases must be approved by the Minister of Science, Technology and Environment before being registered in accordance with Article 42 of the decree and point 20 of this Circular:

One of the parties (the transferor or the transferee) is a State organization or has capital contribution from the State, and the other party is an individual or a non-State organization;

The transferor is an individual, legal person or any other Vietnamese entity and the transferee is a foreign individual or organization.

18.2. All contracts for the transfer of ownership or the right to use an industrial property object - including contracts already approved - must be registered in accordance with Article 42 of the Decree and point 20 of this Circular.

Procedures for approval of the contract for industrial property right transfer

19.1. The dossier of approval of the contract (hereinafter referred to as approval

dossier) shall comprise the following documents:

The declaration requesting the approval of the contract for the transfer of industrial property rights, made according to the form set out by the National Office of Industrial Property, in 3 copies, in which the person who requests the approval must be a State organization or an organization having capital contribution from the State if the contract falls into the category defined in 18.1 (i); or a Vietnamese party if the contract falls into the category defined in 18.1 (ii);

Two originals or two copies of the contract, including appendix or appendices (if any); If the contract is made in any language other than Vietnamese, it must be accompanied by the Vietnamese translation;

The original of the title of protection (in case of assignment of ownership over an industrial property object), or a copy of (in case of assignment of the right to use the industrial property object), if the contract to be approved is a sub-contract, it must be accompanied by a copy of the certificate of registration of the exclusive contract on the corresponding sub-contract;

The written agreement made by the co-owners on the transfer of the right if the corresponding industrial property right is under joint ownership; in the event such an agreement cannot be reached, there must be a written report explaining the reasons for the objection of the remaining co-owners;

The business license of the transferee in case of the transfer of ownership right or the transfer of the right to use a trademark;

The voucher of payment of the contract approving fee;

The letter of procuration (if any).

The approval dossier shall be filed to the National Office of Industrial Property in accordance with provisions on the filing of application (point 10 of this Circular).

The time limit for filing the approval dossier is 60 days from the date of signing the contract. Such time limit can be extended if the applicant can give plausible reasons for the delay.

The National Office of Industrial Property shall have to receive the approval dossier in accordance with provisions on receiving application in point 11 of this Circular, with proper amendments, including the documents mentioned in point 11.2 (i): the declaration; the contract for the transfer of industrial property rights; the voucher of fee payment and the letter of procuration.

The National Office of Industrial Property shall have to examine the approval dossier within 2 months from the date of receiving the dossier, in accordance with the following regulations:

If the approval dossier is valid and the content of the contract conform with the regulations, the National Office of Industrial Property shall report the result of examination of the approval dossier and propose to the Minister of Science, Technology and Environment to issue a decision to approve of the contract within 15 days from the date of receiving the report of the National Office of Industrial Property.

If the dossier still has failings and such failings are correctable (except for the cases defined in paragraph c) below); the National Office of Industrial Property shall suggest the person who has filed the dossier to correct such failings within

an appropriate time limit.

The time limit for person who has filed the dossier to correct the failings of the dossier shall not be accounted for in the time limit for examination of dossier.

In the event the dossier is invalid for following reasons, the National Office of Industrial Property shall propose to the Minister of Science, Technology and Environment to refuse approval of the contract for the transfer of industrial property rights:

The person who has filed the approval dossier fails to correct the failings within the time limit set by the National Office of Industrial Property;

The person who has filed the approval dossier is not the one defined in point 19.1 (i);

The transferor is not the owner of the title of protection (in case of the transfer of the ownership over industrial property objects); or is neither the owner of the title of protection nor the transferee of an exclusive license nor entitled to transfer the sub-license with respect to the corresponding industrial property object (in case of the transfer of the right to use industrial property object);

The transferee has no license for trading in goods/services in conformity with the certificate of registration of corresponding trademarks (in case of the transfer of industrial property rights over trademarks)

The corresponding industrial rights is no longer in the period of protection validity; or that industrial property object is in dispute;

There is ground to confirm that the transfer can infringe upon the industrial property rights of a third party;

The contract has a content not in conformity with provisions on the transfer restrictions, and/or has not the required contents as prescribed in Article 38 of the Decree and points 17.2, 17.3, and 17.4 of this Circular.

The contract has no provision on price or the price for the transfer is lower than the minimum price or higher than the maximum price as prescribed;

The contract does not contain all the signatures of the transferor and the transferee and/or the signatures are not certified to be legitimate;

The signatory(ies) to the contract has (have) no competence to sign.

Before proposing the refusal to approve the contract, the National Office of Industrial Property shall notify the applicant of the result of the examination of the approval dossier, the planned refusal, the reason for refusal and the appropriate time limit for the applicant to appeal. If after such time limit the applicant has no protest or make an unsound protest, the National Office of Industrial Property shall officially propose to the Minister of Science, Technology and Environment to reject the approval of the contract.

The procedures for registration of the contract for the transfer of industrial property rights

20.1. Dossier requesting the registration of the contract (hereinafter referred to as registration dossier) must comprise the following documents:

The declaration to request for the registration of the contract for industrial property right transfer, made in the form set out by the National Office of Industrial Property, 2 copies;

Two originals or two copies of the transfer contract, including appendix(es)

thereof (if any); in case the contract is made in any language other than Vietnamese, there must be the Vietnamese translation attached thereto;

The original of the title of protection (in case of the transfer of ownership over industrial property object); or a copy of such title of protection (in case of the transfer of the right to use industrial property object), if the contract to be registered is a sub-license contract, it must be accompanied by the certificate of registration of the exclusive license contract on the corresponding sub-license;

The written agreement made by the co-owners on the transfer, if the transferred industrial property right is under joint ownership, or if such an agreement cannot be reached, there must be a written report explaining the reasons for the objection of the remaining co-owners;

The business license of the transferee in case of the transfer of the ownership over or the right to use trademarks;

The contract approval decision of the Minister of Science, Technology and Environment (if the contract is required to be approved);

The voucher of payment of contract registration fee;

The letter of procuration (if required);

Where the procedures for both the approval and registration of the contract must be carried out, the documents of the approval dossier already filed shall be considered those of the registration dossier.

20.2. The registration dossier shall be filed and received as the case with the approval dossier (points 19.2 and 19.3 of this Circular).

20.3. The National Office of Industrial Property shall have to examine the registration dossier within 2 months from the date of receiving the dossier. For the contract already approved, the time limit shall be 15 days.

If the registration dossier is valid and the content of the contract conforms with the regulations, the National Office of Industrial Property shall issue a decision to grant the certificate of registration of the contract for the transfer of ownership over industrial property objects, and the title of protection in case of the transfer of trademark with respect to a part of the list of products or services; or the certificate of registration of license contract, and carry out the following procedures:

Making entries into the national register of industrial property and the register of contracts for the transfer of ownership over industrial property objects or the register of license contracts in corresponding cases;

Writing down in the title of protection (in case of the transfer of ownership over industrial property object) and granting the title of protection to the transferee of ownership over trademark with respect to a part of the list of products or services;

Affixing a registration seal on 2 copies of the contract and giving one copy to the registration dossier submitter and keeping the other copy;

Granting to the registration dossier submitter one copy of the certificate of registration of the contract for the transfer of ownership over industrial property objects or of the certificate of registration license contract;

Publicizing the decision on granting the certificate of registration in the Industrial Property Official Gazette;

If the dossier still has failings which are correctable (except for the cases defined in paragraph c) below), the National Office of Industrial Property shall notify the registration dossier submitter and request him/her to correct such failings within an appropriate time limit.

The time limit for the registration dossier submitter to correct the failings of the dossier shall not be accounted for in the time limit for examination of dossier.

If the registration dossier is improper for the following reasons, the National Office of Industrial Property shall reject the registration of the contract:

The registration dossier submitter fails to correct the failings within the time limit fixed by the National Office of Industrial Property or the correction does not meet the requirement;

The registration dossier submitter is neither the transferor nor the transferee of such transfer contract nor the authorized industrial property representative as prescribed;

The transferor is neither the owner of the title of protection (in case of transfer of ownership over industrial property object); nor the owner of the title of protection nor the transferee of exclusive license entitled to transfer sub-license with respect to industrial property objects (in case of license transfer);

The transferee has no license for trading in the products/services defined in the certificate of registration of corresponding trademarks (in case of the transfer of industrial property ownership over trademarks);

The industrial property right is no longer in the period of protection validity; or is in dispute;

There is ground to confirm that the transfer of industrial property rights shall infringe upon the industrial property rights of a third party;

The contract has a content not in conformity with provisions on transfer restrictions as prescribed in Article 38 of the Decree, and/or has not the required contents as prescribed in points 17.2, 17.3 and 17.4 of this Circular;

The contract does not contain all the signatures of the transferor and the transferee and/or such signature are not certified to be legitimate;

The signatory(ies) to the contract has(have) no competence to sign;

There is no decision on approval of the contract (in case the contract is required to be approved).

Before making the official refusal to register the contract, the National Office of Industrial Property shall notify the registration applicant of the result of examination of the registration dossier, the planned refusal, the reasons therefore and set an appropriate time limit for the registration applicant to make appeal. If after such time limit the applicant does not have any protest or make unsound protest, the National Office of Industrial Property shall announce the refusal to register the contract for transfer of industrial property rights, clearly stating the reasons.

Examination of the application for non-voluntary license

21.1. The non-voluntary license application dossier must comprise the following documents

The declaration to request for the non-voluntary license, made in the form set out by the National Office of Industrial Property;

The documents indicating its special significance on security, national defense, protection of the people's health and environment of the relevant invention, utility solution or industrial design and documents evidencing that the relevant invention, utility solution, industrial design is not used by the industrial property owner (or the person who is transferred the whole right to use such object) without proper reasons or used at a level not satisfying the needs of security, national defense, protection of the people's health and the environment;

The documents showing the capability of the applicant of using the invention, utility solution or industrial design and the conditions which are proper in the applicant's view and already offered but not accepted by the industrial property owner (or the person who is transferred the whole right to use industrial property object) without any proper reason;

The vouchers of payment of fee for granting non-voluntary license;

The letter of procuration (if required).

21.2. The non-voluntary license application dossier must be submitted to the National Office of Industrial Property.

21.3. Upon receiving the non-voluntary license application dossier, the National Office of Industrial Property shall examine the dossier in accordance with provisions of Clause 5 Article 51 of the Decree. The procedures for examination of the non-voluntary license application dossier are similar to those for approval of the contract for the transfer of industrial property rights (point 19 of this Circular).

Chapter IV

HANDLING OF THE INTERNATIONAL APPLICATION OF INVENTION/UTILITY SOLUTION AND APPLICATION FOR INTERNATIONAL REGISTRATION OF TRADEMARKS

The procedures carried out with regard to the National Office of Industrial Property

The regulation on the filing of application and carrying out other relevant procedures before the National Office of Industrial Property mentioned in Clauses 2 and 3 Article 15 of the Decree and Point 3 of this Circular shall also apply to the procedures carried out with regard to the National Office of Industrial Property for international application with respect to inventions, utility solutions or trademarks mentioned in this Chapter.

Handling of international application with respect to inventions/utility solutions under the PCT Agreement.

The National Office of Industrial Property has the responsibility to:

Receive Vietnamese-origin international applications;

Collect fees and remit such fee to the International Bureau and the International Search Office in accordance with provisions of the Agreement;

Check to see whether such prescribed fees are paid in time or not;

Examine and handle Vietnamese-origin international applications in accordance with provisions of the Agreement;

Determine the object requested to be protected: if the object requested to be protected involves a nation secret, the following procedures shall not be continued and the paid fees shall be returned to the applicant after deducting fees for sending and copying the international application;

Send one copy (dossier copy) of the Vietnamese-origin international application to the International Office and another (reference copy) to the International Reference Office;

Send and receive mail from the applicants and from international offices.

Languages

The Vietnamese-origin international applications to be filed to the National Office of Industrial Property must be made in English or Russian. Each application shall be made in 3 copies.

In cases the number of copies is insufficient, the National Office of Industrial Property shall provide the remaining copies and the applicant shall have to pay fee for copying international application.

The International Search Office and the International Preliminary Examination Office

With regard to Vietnamese-origin international applications, the competent International Search Offices and the International Preliminary Examination Offices shall be the Patent Offices of Australia, Austria, Russia, Sweden and the European Patent Office.

The international application designating Vietnam

If the international application designates Vietnam, the National Office of Industrial Property shall be the designated office. In this case, in order to enter into the national phase, within 21 months from the priority date, applicant must file to the National Office of Industrial Property:

The declaration to request the grant of invention/utility solution patent, made in the form set out by the National Office of Industrial Property, 3 copies;

Three copies of the international application (if the applicant wishes to enter into the national phase before the date of international publication);

The Vietnamese translation of the international application (including: the description, the request for protection (the original thereof already filed; the amended version and explanation under Article 19 of the PCT Agreement), the summary, legends of the drawings), 3 copies;

The national fee.

The application selecting Vietnam

If the application for international preliminary examination selects Vietnam, the National Office of Industrial Property shall be the selected agency. In this case, and if the selection of Vietnam is made within 19 months from the priority date, in order to enter into the national phase, the applicant must, within 31 months from the priority date, file to the National Office of Industrial Property:

The declaration requesting for the grant of an invention/utility solution patent, made in the form set out by the National Office of Industrial Property, 3 copies;

The Vietnamese translation of the international application (including: the description, the request for protection (the original thereof already filed, the amended version and the explanation under Article 19 of the PCT Agreement), the summary, legends of the drawings), 3 copies;

The Vietnamese translation of the appendice and reports on the international preliminary examination, 3 copies;

The national fee.

Documents requesting the priority right

To be entitled to the priority right, the submitter of an international application must submit to the International Office the necessary documents in accordance with Rule 17.1 (a) of the Regulation on the Implementation of the Agreement; and must submit to the National Office of Industrial Property 3 copies of the Vietnamese translation of such documents within the time limit mentioned in points 23.4 and 23.5 above.

Amendment and supplement to documents in the national phase

Pursuant to Rule 51^{bis} of the Regulation on the Implementation of the PCT Agreement, the applicant must submit the letter of procuration, the document on the transfer of the right to file application in the international phase (if any)... within 24 months from the priority date in case of the international application designating Vietnam and 34 months in case of the international application selecting Vietnam.

Pursuant to Article 2 and Article 41 of the PCT Agreement, in the national phase the applicant can amend, supplement the documents of the application in accordance with provision of point 16.4 of this Circular.

The time limit for commencing the national phase

The time limit for commencing the handling of the international application designating Vietnam or selecting Vietnam in the national phase shall be calculated from the first day of the 22nd months from the priority date in case Vietnam is selected and such selection is made prior to the end of 19-month period calculated from the priority date, of the applicant does not wish to enter into the national phase prior to the above-mentioned time limit.

Examination of the international application

The international applications shall be examined in terms of their formality and contents in accordance with procedures applicable to the national applications.

International applications assumed to be withdraw

Besides the cases assumed to be withdrawn as provided for in the PCT Agreement and the Regulation on the Implementation of the Agreement, in the event the national fee is not paid to the National Office of Industrial Property or there is no Vietnamese translation after the expiry of the time limit prescribed in points 23.4 and 23.5, the international applications designating Vietnam shall be assumed to be withdrawn.

Fees

The submitter of the Vietnamese-origin international application must pay fees at levels and in accordance with procedures provided for in the Regulation on the Implementation of the PCT Agreement and in accordance with Regulations of the Ministry of Finance, the Ministry of Science, Technology and Environment.

Making and filing the application for international registration of Vietnamese-origin trademark abroad under the Madrid Agreement

24.1. Every individual, legal person or other entity shall have the right to file application for international registration of Vietnamese-origin trademarks under the Madrid Agreement provided that such trademarks have already been registered in Vietnam.

24.2. Application for registration

An application for international registration of Vietnamese-origin trademarks must be made in French and in the form provided free of charge by the National Office of Industrial Property, by way of filling in items for the applicant (except items for the National Office of Industrial Property and the International Office) and must be accompanied with trademark samples. The application must clearly specify the Madrid Agreement member countries where the applicant wish to have his/her trademark protected. The applicant must estimate the total of fees to be paid to the International Office in accordance with the fee index printed in the application form. If the applicant believes that the estimated fee amount is correctly calculated or after being notified by the National Office of Industrial Property of the exact amount of fee to be paid, the applicant shall have to pay such fee to the International Office. In addition, the applicant has to pay additional fee to the National Office of Industrial Property as prescribed.

The application-receiving agency

The application for international registration of trademarks shall be filed to the International Office via the National Office of Industrial Property.

The date on which the National Office of Industrial Property receives the application shall be considered the date the application is received by the

International Office if the International Office receives the application within 2 months from such date.

Filing of application to the International Office

After the application is filed to the International Office, all transactions between the applicant and the International Office must be conducted through the National Office of Industrial Property including the amendment of documents, restrictions on the list of products, assignment of registered rights.

Handling of application for Vietnam-designated international registration of trademarks

25.1. After receiving the notice from the International Office on the application Vietnam-designated international registration of trademarks, the National Office of Industrial Property shall examine the content of such application as is the case with the trademark application directly filed to the National Office of Industrial Property. Within 12 months from the date the trademark is internationally registered, the National Office of Industrial Property shall have to confirm the possibility of the mark being protected. If the trademark is impossible to be protected or partly rejected, the National Office of Industrial Property shall, within the above-said time limit, notify in writing the applicant through the International Office of the reason for the rejection.

Also within the above time limit, if there is no notification of rejection from the National Office of Industrial Property, the trademark shall be protected in Vietnam.

Within 3 months from the date the National Office of Industrial Property sends the notification of rejection, the applicant can file a complaint against the decision of the National Office of Industrial Property, the procedures for making and settling the complaint are similar to those for trademark application directly filed to the National Office of Industrial Property. The National Office of Industrial Property shall notify the applicant and the International Office of the result of the settlement of the complaint.

25.3. The trademark accepted for its protection in Vietnam under the Madrid Agreement shall be publicized on the Industrial Property Office Gazette. The scope (volume) of the protection shall be defined upon the content of registration of such trademark endorsed by the World Intellectual Property Organization (WIPO) and certified by the National Office of Industrial Property.

Chapter V

AMENDMENT OF TITLE OF PROTECTION; MAINTENANCE OF VALIDITY OF TITLE OF PROTECTION OF INVENTION, UTILITY SOLUTION; EXTENSION OF VALIDITY OF TITLE OF PROTECTION OF INDUSTRIAL DESIGN; TRADEMARK AND APPELLATION OF ORIGIN OF GOODS

Amendment of title of protection

The owner of a title of protection is obliged to notify in writing the National Office of Industrial Property of every change in the name address of the owner of title of protection.

The owner of title of protection has the right to request the National Office of Industrial Property to narrow the scope (volume) of industrial design and trademark protection by excluding a number of details of the trademark without substantially changing such trademark; reduce a number of products on the list of products and/or services specified in the title of protection of mark.

To amend the above-said contents, the owner of the title of protection must file an application for amendment of the title of protection to the National Office of Industrial Property accompanied with (i) the original of the title of protection; (ii) documents certifying the changes in the name and address of the owner of the title of protection; (iii) two sets of photos or drawings of the industrial design plans to be excluded; (iv) 10 samples of the trademark already modified; (v) the voucher of payment of fee for amendment of the title of protection; (vi) the letter of procuration (if required).

The National Office of Industrial Property shall examine the application for amendment of the title of protection within 2 months from the date of receiving the application. If it deems that the application is valid and the amendment neither extends scope (volume) of the protection nor substantially change the nature of the protected object, the National Office of Industrial Property shall amend the title of protection, register and publicize such amendment on the Industrial Property Official Gazette. Otherwise, the National Office of Industrial Property shall notify the applicant of the rejection of amendment and clearly define the reasons therefor.

Maintenance of validity

To have the validity of his/her title of protection of invention, utility solution maintained, the owner of the title must pay the fee for maintenance of validity within 6 months prior to the date of validity expiry. Such fee may be paid later than the above-said time limit, but not later than 6 months from the expiry date. Failing this, the owner of the title of protection shall have to pay an additional 10% of fee for each month of delayed payment.

Extension of validity

To have his/her title of protection extended, within 6 months prior to the date of validity expiry of the title of protection, the owner of the title must file an application therefor to the National Office of Industrial Property.

The application for extension of validity can be filed later than the above-said time limit, but not later than 6 months from the expiry date of validity of the title of protection. Failing this, the applicant must pay a fee for extension of validity and an additional 10% for each month of delayed payment.

The dossier of application for the extension of validity of title of protection must include the following documents:

The declaration to request for extension of validity of the title of protection, made in the form set out by the National Office of Industrial Property, 2 copies;

The original of the title of protection;

The voucher of payment of fee for extension;

The letter of procuration (if required).

The National Office of Industrial Property shall have to examine the application for extension within 2 months from the date of receiving the application. The National Office of Industrial Property shall issue a decision on extension, note down such extension in the title of protection, register and publicize such extension on the Industrial Property Official Gazette, except for the following cases:

The extension application is invalid, or filed not in accordance with prescribed procedures;

There is ground to confirm that the owner of certificate of the right to use the appellation of origin of goods does not use such trademark or appellation of origin of goods or has not used such object for the last 5 consecutive years prior to the expiry date of the title of protection without plausible reasons;

The applicant for extension is not the owner of the title of protection of the corresponding trademark appellation of origin of goods or industrial design.

If the application falls into one of the above-said cases, the National Office of Industrial Property shall issue a notification of refusal of extension together with the clear reasons.

Chapter VI

THE PROCEDURES FOR GRANTING REPRESENTATION LICENSE

The dossier of application for representation license

A representation license shall be granted by the National Office of Industrial Property after considering the dossier of application for the representative license as prescribed in points 29.2 and 29.3 below. The applicant shall have to pay the prescribed fee.

The dossier of application for the certificate of industrial property representation service organization shall comprise:

The application for the certificate of industrial property representation service organization, with a proposed list of industrial property representatives of the organization;

The copies of the operating statute and certificate of business registration;

The copy of the decision on appointment to the leading posts of the organization or a written document signed by the head of the organization to authorize a member of the organization on the above-said proposed list to represent the organization;

The table of service fees for the industrial property representation of the organization after being registered in accordance with regulations on management of fees and charges;

The voucher of payment of fee for grant of representation license.

The dossier of application for the certificate of industrial property representation service organization must be filed together with dossiers of application the industrial property representative cards of individuals on the above-said proposed list.

The dossier of application for industrial property representative card shall comprise:

The application for the industrial property representative card, with the certification of the permanent address of the applicant by the People's committee of ward, commune or township;

A copy of the university diploma;

A copy of the certificate of graduation from an official industrial property training course; or a certificate of working experience and earlier assignments as prescribed in Clause 1 Article 58 f the Decree;

A copy of the certificate of having passed the examination on current industrial property legislation of Vietnam issued by the National Office of Industrial Property;

The voucher of payment of fee for application filing.

Consideration of the dossiers of application for representation license

Within one month from the date of receiving the dossier of application for a representation license, the National Office of Industrial Property shall have to consider and decide whether or not to grant the representation license. In case of refusal, the National Office of Industrial Property shall have to notify the applicant of the reasons therefor. In case of grant, and after the applicant pays the fee for the grant of representative license, the National Office of Industrial Property shall have to carry out the following procedures:

Granting the representation license;

Making entry of the grant of the representative license into the Register of Industrial Property Representatives;

Publicizing the grant of the representative license on the Industrial Property Official Gazette.

Chapter VII

FINAL PROVISIONS

Complaints

If the applicant disagrees with the decision related to the handling of the application, as well as the approval and registration of contract for the transfer of industrial property rights, consideration of application for grant of non-voluntary license, the extension of title of protection, grant of representative license, he/she shall be entitled to lodge a complaint or protest in accordance with the order and procedures prescribed in Clauses 2, 3 and 4 Article 27 of the Decree.

Handling of applications filed during the period from July 1st, 1996 to the date when this Circular takes affect

The applications filed during the period from July 1st, 1996 to the date when this Circular takes affect are allowed to use document forms in accordance with Circular No. 1134/SC of October 17, 1991 of the Ministry of Science, Technology and Environment guiding the implementation of Decree No. 84-HDBT of March 20, 1990 of the Council of Ministers, and shall be handled in accordance with this Circular. The time limit for handling such applications shall be extended to equal to the time period from the date of filing the application to the date when this Circular takes affect.

Document forms and regulations on examination of applications

The Director of the National Office of Industrial Property shall have to issue necessary document forms related to the application, the approval and registration of contracts for the transfer of industrial property rights, and issue the Regulation on examination of applications.

Implementation

This Circular replaces the following documents of the State Committee for Science and Technique and the Ministry of Science, Technology and Environment:

Chapters II, III and IV of Circular No. 1134/SC of October 17, 1991 guiding the implementation of Decree No. 84-HDBT of March 20, 1990 of the Council of Ministers;

Circular No. 437/SC of March 19, 1993 providing additional guidance on the registration of trademarks;

Circular No. 163/TT-SHCN of April 15, 1994 guiding the implementation of the regulations on approval and registration of license contacts;

Circular No. 238/TT-SHCN of May 2, 1994 providing guidance on the filing and handling of international applications for protection of invention, utility solution under the Agreement on Patent Cooperation in Vietnam;

Decision No. 199/QD of December 21, 1992 stipulating regulations on industrial property representatives.

This Circular takes affect 15 days after its signing.

Minister of Science, Technology and Environment
PHAM GIA KHIEM