

## DECREE

### DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE INTELLECTUAL PROPERTY LAW ON INDUSTRIAL PROPERTY, PROTECTION OF INDUSTRIAL PROPERTY RIGHTS, RIGHTS TO PLANT VARIETIES AND ON STATE MANAGEMENT OF INTELLECTUAL PROPERTY

*Pursuant to the Law on Government Organization dated June 19, 2015; The Law amending and supplementing a number of articles of the Law on Government Organization and the Law on Organization of Local Government dated November 22, 2019;*

*Pursuant to the Intellectual Property Law dated November 29, 2005; Law amending and supplementing a number of articles of the Intellectual Property Law dated June 19, 2009; The Law amending and supplementing a number of articles of the Law on Insurance Business, the Law on Intellectual Property dated June 14, 2019 and the Law amending and supplementing a number of articles of the Law on Intellectual Property dated June 16, 2022;*

*At the request of the Minister of Science and Technology;*

*The Government promulgates a Decree detailing a number of articles and measures to implement the Intellectual Property Law on industrial property, protection of industrial property rights, rights to plant varieties and state management of intellectual property.*

#### Part One

#### GENERAL PROVISIONS

##### Article 1. Scope of regulation

This Decree provides details and implementation measures to the provisions of the Intellectual Property Law on:

1. The establishment, subject, content, limits of industrial property rights, transfer of industrial property rights, industrial property representation and measures to promote industrial property activities.
2. Determination of acts of infringement, nature and extent of infringement of industrial property rights, rights to plant varieties, determination of damage, request and resolution of requests for handling of infringement of industrial property rights and rights to plant varieties, control of exported and imported goods related to industrial property and rights to plant varieties, industrial property and rights to plant varieties assessment and state management of intellectual property.

##### Article 2. Subjects of application

1. Vietnamese organizations and individuals, foreign organizations and individuals who meet the conditions eligible for the protection of industrial property rights in Vietnam according to international treaties to which Vietnam is a member.
2. Organizations and individuals that have industrial property rights or rights to protected plant varieties or commit acts of infringing upon industrial property rights or rights to plant varieties according to the provisions of the Intellectual Property Law.
3. Other relevant organizations and individuals.

##### Article 3. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. "Vietnamese organizations and individuals" mean individuals, legal entities and other subjects of civil law.
2. "Applicant" means an organization or individual who files an application to establish industrial property rights or an organization or individual who files a request to handle acts of infringement of industrial property rights or rights to plant varieties.
3. "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 1883, revised in 1967 and 1979.
4. "PCT Treaty" means the Patent Cooperation Treaty of 1970, as revised in 1984 and 2001.
5. "Madrid Agreement" means the Madrid Agreement Concerning the International Registration of Marks of 1891, as revised in 1979.
6. "Madrid Protocol" means the Protocol relating to the Madrid Agreement of 1989, as revised in 2006 and 2007.
7. "The Hague Agreement" means the Hague Agreement Concerning the International Registration of Industrial Designs, Document of 1999.
8. "PCT application" means a patent application filed under the PCT Treaty.
9. "PCT application designating or selecting Vietnam" means a PCT application filed in any member of the PCT Treaty, including Vietnam, of which Vietnam is a designated or selected country.
10. "PCT application at the national stage" means a PCT application that designates or selects Vietnam and is filed with the state management agency of industrial property rights.
11. "PCT application originating in Vietnam" means a PCT application filed from Vietnam, in which there is a claim for protection in any member of the PCT Treaty, including Vietnam.
12. "Madrid application" is an international trademark registration application filed under the Madrid Agreement or under the Madrid Protocol.
13. "Madrid application originating in Vietnam" means a Madrid application for trademark protection in other members of the Madrid Agreement or the Madrid Protocol filed from Vietnam.
14. "Madrid application designating Vietnam" means a Madrid application for trademark protection in Vietnam, originating from other members of the Madrid Agreement or the Madrid Protocol.
15. "Hague Application" means an application for international registration of an industrial design filed under the Hague Agreement.
16. "Hague application designating Vietnam" means a Hague application for protection of an industrial design in Vietnam, originating from any member of the Hague Agreement, including Vietnam.
17. "Hague application originating in Vietnam" means a Hague application filed from Vietnam, in which there is a claim for industrial design protection in any member of the Hague Agreement, including Vietnam.
18. "International Bureau" means the International Bureau of the World Intellectual Property Organization.

19. "Acts of infringement" are acts which infringing upon industrial property rights and rights to plant varieties.
20. "Handling acts of infringement" means handling acts of infringement of industrial property rights and rights to plant varieties.
21. "Infringer" is an organization or individual that commits an act of infringement upon industrial property rights or rights to plant varieties.
22. "Infringing element" is an element created from acts of infringement of industrial property rights or rights to plant varieties.
23. "Examined acts" are acts which are suspected and examined to determine whether they are acts of infringement or not.
24. "Examined subject matter" means a subject matter which is suspected and examined to conclude whether it is an infringing subject matter of industrial property rights or rights to plant varieties.
25. "Petition for handling infringement" refers to a request for application of measures to deal with an infringement.
26. "Intellectual Property Law" means the Law on Intellectual Property dated November 29, 2005, as amended and supplemented by the Law amending and supplementing a number of articles of the Intellectual Property Law dated June 19, 2009, Law amending and supplementing a number of articles of the Law on Insurance Business, the Law on Intellectual Property dated June 14, 2019 and the Law amending and supplementing a number of articles of the Law on Intellectual Property dated June 16, 2022.

## **Part Two**

### **STATE MANAGEMENT OF INTELLECTUAL PROPERTY**

#### **Article 4. Principle of uniform state management of intellectual property**

The organization and implementation of state management activities on intellectual property prescribed in Article 10 and Article 11 of the Intellectual Property Law is based on the principle of unity in objectives, content, and measures under common directive of the Government, with clear assignment of responsibilities and close coordination between ministries, ministerial-level agencies, agencies under the Government, and People's Committees at all levels.

#### **Article 5. Responsibility to preside over and coordinate in state management of intellectual property**

1. Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with Ministry of Culture, Sports and Tourism, Ministry of Agriculture and Rural Development, and other ministries, ministerial-level agencies, Governmental agencies, and People's Committees at all levels and related agencies to carry out the following joint activities to ensure uniform state management of intellectual property:

- a) Formulate, promulgate or submit to competent authorities for promulgation and organize the implementation of strategies, policies and general legal documents on the protection of intellectual property rights;
- b) Monitor, urge and inspect the implementation of general tasks on intellectual property assigned by the National Assembly and the Government to ministries, ministerial-level agencies, Governmental agencies

and People's Committees at all levels according to the provisions of Articles 10 and 11 of the Intellectual Property Law and this Decree;

c) Synthesize, evaluate, and report to the Government on the status of intellectual property rights protection activities, propose specific policies and measures to improve the efficiency of the intellectual property system and ensure the uniformity of state management of intellectual property;

d) Formulate and direct the implementation of general programs and schemes on intellectual property rights protection, measures for coordination among competent state agencies in the field of intellectual property right protection;

d) Negotiate, sign to join and organize the implementation of general international treaties on intellectual property; propose handling of national disputes related to intellectual property in international relations;

e) Building a database system, establishing a national information network on state management of intellectual property and protection of intellectual property rights.

2. Ministry of Culture, Sports and Tourism shall be responsible to coordinate with Ministry of Science and Technology in performing the tasks specified in Clause 1 of this Article; ensure the performance of the state management function of copyright and related rights, ensure that policies, strategies and legal documents on copyright and related rights are consistent with policies, strategies and legal documents of general law on intellectual property; periodically or irregularly provide information to Ministry of Science and Technology on state management and protection of intellectual property rights in order to coordinate in handling arising problems, compile reports to the Prime Minister.

3. Ministry of Agriculture and Rural Development shall be responsible to coordinate with Ministry of Science and Technology in performing the tasks specified in Clause 1 of this Article; ensure the performance of the function of state management of rights to plant varieties, ensure that policies, strategies and legal documents on the protection of plant variety rights are consistent with policies, strategies and legal documents of general law on intellectual property; periodically or irregularly provide information to Ministry of Science and Technology on state management activities and intellectual property rights protection to coordinate in handling arising issues and compile reports to the Prime Minister.

#### **Article 6. Responsibilities of Ministry of Science and Technology regarding industrial property**

Ministry of Science and Technology has the following responsibilities in state management of industrial property:

1. Develop and organize the implementation of strategies and policies to protect industrial property rights.

2. Promulgate, submit to competent authorities for promulgation, and organize the implementation of legal documents on industrial property.

3. Organize the system of agencies performing the function of state management of industrial property.

4. Provide professional guidance, organize training and professional development on industrial property.

5. Organize the establishment of industrial property rights, registration of contracts on assignment of industrial property rights, and carry out other procedures related to industrial property rights protection titles.

6. Exercise the right to compulsory licensing of inventions according to the provisions of Article 147 of the Intellectual Property Law.

7. Preside or coordinate in implementing measures to protect the legitimate rights and interests of organizations, individuals, the State and society regarding industrial property.
8. Manage industrial property appraisal activities; issuance of industrial property assessor cards.
9. Examine and inspect on the compliance with industrial property laws; resolve complaints, denunciations and handle violations of industrial property laws.
10. Organize information and statistical activities on industrial property; manage and organize activities related to the national database on industrial property.
11. Organize the education, propagation and dissemination of knowledge, policies and laws on industrial property.
12. Managing industrial property representation activities; issue industrial property representation service practicing certificates.
13. International cooperation on industrial property; propose to handle disputes between Vietnam and other countries on industrial property.
14. Perform other tasks assigned by the Government.

#### **Article 7. Coordination mechanism in state management of intellectual property**

1. Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with the Ministry of Culture, Sports and Tourism, the Ministry of Agriculture and Rural Development and relevant agencies in protecting, examining, inspecting, and handling intellectual property rights infringement.
2. The state management agency of intellectual property is responsible for fully and promptly replying to requests of the agency competent to handle infringement of intellectual property rights.
3. The state management agency of intellectual property is responsible for joining the examination team or the inspection team when required to serve the inspection and examination.

#### **Article 8. Responsibilities of ministries, ministerial-level agencies, Governmental agencies, People's Committees of provinces and centrally run cities for intellectual property**

Ministries, ministerial-level agencies, Governmental agencies, People's Committees of provinces and centrally run cities shall, within the scope of their functions and tasks, have to coordinate with Ministry of Science and Technology, Ministry of Culture, Sports and Tourism and Ministry of Agriculture and Rural Development to perform the following specific tasks:

1. To perform the tasks specified in Clause 1, Article 5 of this Decree and directly perform specific tasks assigned by the Government.
2. Ensure the implementation of local intellectual property policies and laws in accordance with and comply with the provisions of the Intellectual Property Law and legal documents guiding the implementation of the Intellectual Property Law.
3. Periodically or irregularly provide information to the Ministry of Science and Technology on state management activities and protection of intellectual property rights in order to coordinate in handling arising problems, compiling and reporting to the Prime Minister.

#### **Article 9. Responsibilities of the People's Committees of provinces and centrally run cities, ministries, ministerial-level agencies, and Governmental agencies on industrial property**

1. The People's Committees of the provinces and centrally-run cities have the following responsibilities in the local state management of industrial property:

- a) Organize the implementation of policies and laws on industrial property;
- b) Formulate, promulgate and organize the implementation of local regulations on industrial property;
- c) Organize the management system of industrial property activities in the locality and take measures to enhance the effectiveness of that system;
- d) Organize the propagation and dissemination of knowledge, policies and laws on industrial property, take measures to promote industrial property activities;
- dd) Guide and support organizations and individuals to carry out industrial property procedures;
- e) Cooperate with relevant agencies in the protection of industrial property rights and handling of violations of the law on industrial property;
- g) Examine and inspect the compliance of the law on industrial property, settle complaints and denunciations about industrial property in the locality;
- h) Manage geographical indications in the locality, including geographical names and other signs indicating the geographical origin of local specialties;
- i) International cooperation on local industrial property.

2. Ministries, ministerial-level agencies and Governmental agencies shall have to organize and direct the implementation of the law on industrial property and manage industrial property subject matters under their management.

### **Part Three**

## **INDUSTRIAL PROPERTY RIGHTS**

### **Chapter I**

## **ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS**

### **Section 1. GENERAL PROVISIONS ON ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS**

#### **Article 10. Grounds and procedures for establishing industrial property rights**

1. Industrial property rights to inventions, layout designs, industrial designs, trademarks and geographical indications are established on the basis of decisions of state management agencies on industrial property rights to grant protection titles to applicants for registration of those subjects according to the provisions of Chapter VII, Chapter VIII and Chapter IX of the Intellectual Property Law and Appendix I of this Decree.

Industrial property rights for internationally registered trademarks under the Madrid Agreement and the Madrid Protocol are established based on the acceptance of protection by the state management agency of industrial property for such international registration.

Industrial property rights to internationally registered industrial designs under the Hague Agreement are established based on acceptance of protection by the state management agency of industrial property for such international registration.

2. Industrial property rights to famous trademarks are established based on widespread practice of using that trademark according to the provisions of Article 75 of the Intellectual Property Law without the need

to carry out registration procedures. When using rights and resolving disputes over rights to a famous trademark, the owner of that trademark must prove his or her rights with evidence as prescribed in Point c, Clause 5, Article 91 of this Decree.

3. Industrial property rights to a trade name are established based on the lawful use of such trade name corresponding to the area (territory) and business sector without the need to carry out registration procedures. When exercising rights and resolving disputes over rights to trade names, the entity with the trade name must prove their rights with evidence as prescribed in Point b, Clause 5, Article 91 of this Decree.

4. Industrial property rights to business secrets are established based on financial, intellectual investment or any other lawful way to find, create or obtain such information and keep such information confidential to constitute such trade secret without the need to carry out registration procedures. When exercising rights and resolving disputes over rights to business secrets, the entity possessing the business secret must prove their rights with the evidence specified at Point a, Clause 5, Article 91 of this Decree.

5. The right to fight unfair competition is established based on the reality of competition activities without having to carry out registration procedures at the state management agency of industrial property. When using the right to fight against unfair competition, the subject must prove their right by evidence showing the subject matters, field, territory and time of business related to competition activities.

#### **Article 11. Industrial property rights under international treaties**

1. In case an international treaty related to industrial property to which Vietnam is a member has provisions on recognition and protection of industrial property rights of organizations and individuals of members according to the provisions of Article 6 of the Intellectual Property Law, the industrial property rights of organizations and individuals of other members shall be recognized and protected in Vietnam.

Industrial property rights are protected within the scope and term in accordance with the provisions of international treaties and do not require carrying out the registration procedures according to the provisions of the Intellectual Property Law.

2. The Ministry of Science and Technology publishes all necessary information related to industrial property rights recognized and protected in Vietnam according to international treaties.

#### **Article 12. Priority rights of applications for registration of inventions, industrial designs, and trademarks**

Priority rights for applications for registration of patent, industrial designs, and trademarks specified in Article 91 of the Intellectual Property Law are applied as follows:

1. In case the applicant for registration of a patent, industrial design or trademark wants to enjoy priority rights according to the provisions of the Paris Convention, the applicant's request for priority rights will be accepted if it meets the requirements of the following conditions:

a) The applicant is a Vietnamese citizen or a citizen of a member country of the Paris Convention or a citizen of another country residing or having a production or business establishment in Vietnam or in a member country of the Paris Convention;

b) The first application has been filed in Vietnam or a member country of the Paris Convention and that application contains the part corresponding to the claim for priority right of the application for registration of the patent, industrial design or trademark;

c) The registration application is filed within the following time limit from the first filing date: 06 months for industrial design registration applications or trademark registration applications, 12 months for patent registration applications;

d) In the application for registration of a patent, industrial design or trademark, the applicant clearly states the claim for priority right and submits a copy of the first application mentioned at Point b of this Clause in case it is filed overseas, certified by the agency receiving the first application. A copy of the first application may be submitted within 3 months from the date of application;

dd) Pay in full the fee for requesting priority right.

2. The first application that has been filed in Vietnam or in a member country of the Paris Convention according to the provisions of Point b, Clause 1 of this Article is a qualified application to confirm the date that application was filed in the relevant member country, regardless of the result of processing that application.

3. In case the applicant for registration of an patent, industrial design, or trademark wants to enjoy priority rights under another international treaty, the request for priority rights will be accepted if the requirements provided in that international treaty are met.

### **Article 13. Industrial property registration rights under international treaties**

1. Foreign organizations and individuals that meet the conditions for industrial property rights protection in Vietnam specified in Article 2 of this Decree may apply for industrial property registration in Vietnam according to the international treaties concerning or relating to the international application procedure.

2. Vietnamese organizations and individuals can apply for international industrial property registration to request protection of their rights in Vietnam if stipulated by international treaties.

### **Article 14. Security control procedures for inventions**

1. For inventions in the technical field that have an impact on national defense and security, listed in Appendix VII of this Decree, created in Vietnam and under the right of registration of an individual who is a Vietnamese citizen and permanently residing in Vietnam or of an organization established under Vietnamese law, in order to satisfy the conditions for submitting an invention registration application abroad as prescribed in Clause 1, Article 89a of the Intellectual Property Law, security control procedures must be carried out before the state management agency of industrial property publishes such patent application.

2. Ministry of National Defense and Ministry of Public Security shall designate agencies to receive and process applications for identification of inventions in patent registration applications in technical fields that have an impact on national defense and security as prescribed in Clauses 1 and 2 of this Article. 3 This.

3. Within 01 month from the date of receipt of written notice from the national patent applicant about the intention to submit the application abroad to carry out patent security control according to the provisions of Clause 1 of this Article or the date the PCT Application of Vietnamese origin is filed through the state management agency of industrial property, if there are grounds to suspect that the invention in that application belongs to the cases in the provisions of Clause 1 of this Article, the state management agency of industrial property temporarily suspends the application examination process and sends a written request to identify inventions in technical fields that have an impact on national defense and security to designated agencies of the Ministry of National Defense and the Ministry of Public Security. The designated agency of Ministry of National Defense and Ministry of Public Security shall issue a document determining whether the invention stated in the application is an invention in technical fields that impact national defense and security or not within 03 months from the date the state management agency of industrial property sends the written request.

4. For invention registration applications specified in Clause 3 of this Article, the state management agency of industrial property notifies the applicant of the temporary suspension of the application



examination process to carry out the inspection procedure for security control according to the provisions of Article 89a of the Intellectual Property Law within 07 working days from the date the written request is sent to the designated agency of the Ministry of National Defense and the Ministry of Public Security.

5. Within 20 days from the date of receipt of a notice from the designated agency of the Ministry of National Defense or the Ministry of Public Security that the subject matter in the patent application is in the technical fields that have an impact on national defense and security as prescribed in Clause 3 of this Article, the state management agency of industrial property shall notify the applicant of the above information and at the same time request the applicant to register an invention according to appropriate procedures in accordance with the law on protection of state secrets within 01 month from the date of notification and carry out the following procedures:

a) For an invention registration application filed under the national route: In case the applicant submits a patent application according to the procedures in accordance with the provisions of the law on protection of state secrets, the application may continue to be handled according to the provisions of the law. In case the applicant fails to submit the patent application according to the procedures in accordance with the law on protection of state secrets within the fixed time limit, the application shall be considered withdrawn and shall be destroyed by the state management agency of industrial property in accordance with the law on protection of state secrets, unless the applicant has grounds to prove that the invention is not a state secret.

b) For PCT applications originating in Vietnam filed through the state management agency of industrial property: Destroy the application in accordance with the law on protection of state secrets and comply with the provisions of Point e, Clause 1, Article 20 of this Decree, except in cases where the applicant has grounds to prove that the invention is not a state secret.

6. The state management agency of industrial property shall continue the application examination process as prescribed in the following cases:

a) At the end of the 03-month period specified in Clause 3 of this Article, the state management agency of industrial property does not receive a notice from the designated agency of the Ministry of National Defense or the Ministry of Public Security.

b) A designated agency of the Ministry of National Defense or the Ministry of Public Security notifies that the invention in the application is not an invention in the technical fields affecting national defense and security.

The state management agency of industrial property shall notify the applicant of the continuation of the application processing within 01 month from the time stated at Point a of this Clause or from the date of receipt of the notice mentioned in Point b of this clause.

7. For an application falling into the cases specified in Clause 6 of this Article, the applicant has the right to file such invention registration application abroad.

#### **Article 15. How to calculate time limit**

1. The calculation of term in industrial property activities is carried out according to the provisions on term limits of the Civil Code.

2. The time limit for the applicant and related parties to submit, amend, supplement documents, or give comments can be extended once by the same amount of time set in the state management agency of industrial property, provided that the person requesting the extension submits a written request for extension before the end of the fixed period and pay the extension request fee according to regulations.

3. Do not include in the time limit the period of force majeure events or objective obstacles that prevent organizations and individuals with rights and obligations from being able to exercise their rights and

obligations within the time limit. If the organization or individual requests it and has valid evidence to prove that situation. If the request is accepted, the state management agency of industrial property shall issue a decision or notice to revoke the decision or notice issued on the grounds that the organization or individual does not exercise their rights and obligations. service on time and restore the application processing to the status as before the deadline.

4. A force majeure event is an event that occurs objectively and cannot be predicted (for example, natural disasters, warfare, etc.) and cannot be overcome even though necessary measures have been applied in all capacity.

Objective obstacles are obstacles caused by objective circumstances (for example: illness, business trips, studying in distant places, etc.) which make it impossible for people with rights and obligations to know that their rights and legitimate interests had been infringed, or make them unable to perform their rights and obligations.

#### **Article 16. Amendments and supplementation to industrial property registration applications**

1. Before the state management agency of industrial property issues a decision to refuse an application, to grant or refuse to grant a protection title, the applicant may:

a) Amending and supplementing documents in the application with the condition that the amendments and supplementation do not expand the scope (volume) of protection disclosed in the description of the patent application or in the set of photographs, drawings and descriptions for industrial design applications, in the trademark specimen and list of goods and services for trademark applications. effective and must not change the nature of the subject stated in the application;

b) Amendments to the name, address, country code of the applicant; name, nationality, address of the author of the invention, layout design, industrial design; amendments to intellectual property representation.

2. Amendments and supplements to the application are carried out as follows:

a) In case of amendments or supplementation to the application proactively made by the applicant after the state management agency of industrial property accepts the application as to formality, including change of legal representation in Vietnam, the request for amendment and supplementation must be made according to Form No. 04 in Appendix II of this Decree;

b) In case the amendment or supplementation is made before the state management agency of industrial property accepts or refuses to accept an application as to formality or made based on a notification from the state management agency of industrial property, requests for amendment and supplementation must be expressed in writing, clearly stating the content of the request for amendment and supplementation;

c) The applicant may request amendments and supplements with the same content related to multiple applications with the same industrial property subject matter in a Request form or a document requesting amendment and supplementation;

d) The person requesting to amend or supplement the application must pay the following fees:

d1) Fee for examination of request to amend and supplement for each amended content according to regulations and copy of payment invoice (in case of payment made via postal service or direct payment to the account of the management agency state of industrial property);

d2) Fee for publishing information on amendments and supplementation to applications according to regulations if the amended or supplemented content must be announced according to the provisions of Point a, Clause 3 of this Article. In cases amendments and supplementation must be made to correct

errors caused by the state management agency of industrial property, the applicant does not have to pay a publication fee;

dd) For requests to amend and supplement the following documents, the applicant must submit the corresponding amended and supplemented documents:

dd1) Part or all of the description and summary of the invention for the patent application;

dd2) 04 sets of photos or sets of drawings, descriptions of integrated circuits manufactured according to layout design for layout design registration applications;

dd3) 04 sets of drawings or 04 sets of photos and descriptions for industrial design applications;

dd4) 05 trademark samples, list of goods and services bearing the trademark for trademark registration application;

dd5) A description of the specific characteristics of the product bearing the geographical indication, and a map of the geographical area corresponding to the geographical indication for the geographical indication registration application.

Documents amending and supplementing the application must meet the regulations on such documents in Appendix I of this Decree. For requests for amendments and supplements at Points dd1, dd2 and dd3 of this Clause, the applicant must submit a detailed explanation of the amendments and supplements compared to the original submitted documents.

3. The state management agency of industrial property rights handles requests to amend and supplement applications as follows:

a) Publish the amended and supplemented contents in case the request to amend or supplement information is related to a formally accepted application stated in the decision to accept an application as to formality; name and nationality of the author of the invention, industrial design, layout design; Invention summary with drawings (if any); set of photos or industrial design; Trademark specimens and accompanying list of goods and services; a description of the specific characteristics of the product bearing the geographical indication and the name of the product bearing the geographical indication;

b) In case the applicant requests to amend or supplement the application according to the provisions of Point a, Clause 2 of this Article, the amended and supplemented content will be evaluated according to Article 109 of the Intellectual Property Law and other provisions in relevant legal documents;

c) If a request to amend or supplement an application is submitted after a notice to grant a protection title in the following cases, the application must be re-examined and the applicant must pay the prescribed fee:

c1) Amend information related to the nature of the object stated in the application: description of the invention; description, set of photos or drawings of industrial design; trademark specimens, list of goods and services bearing the mark, regulations on use of collective marks, regulations on use of certification marks; A description of the specific characteristics of the product bearing the geographical indication and the geographical area corresponding to the geographical indication;

c2) Change of trademark applicant;

d) Issue a notice of acceptance or refusal to accept the request to amend or supplement within the time limit specified in Clause 4, Article 119 of the Intellectual Property Law;

d) Issue a notice of acceptance or refusal to accept the request to amend or supplement the application in documents sent to the applicant during the process of the relevant industrial property application for the cases specified in point 1. b Clause 2 of this Article.

**Article 17. Splitting applications and withdrawing applications for industrial property registration; Request substantive examination and conversion of patent application**

1. Division of industrial property applications is carried out as follows:

a) Before the state management agency of industrial property issues a decision to refuse to accept an application, decide to grant or refuse to grant a protection title, the applicant can divide the application (divide one or several technical solution in the patent application, one or several industrial designs in the industrial design application, part of the list of goods and services in the trademark application to one or more new applications, called divisional application);

b) The divisional application carries a new application number and is given the filing date of the original application or the priority date(s) of the original application (if any). For each divisional application, the applicant must pay the filing fee and any fees and charges for procedures carried out independently of the original application (other than procedures carried out in the original application without need to do it again in the divisional application), but do not have to pay the examination fee to request priority rights (except in the case of dividing the industrial design application due to lack of unity). The separation application is assessed for formality and continues to be processed according to the procedures that have not been completed for the original application. The separation application must be announced according to regulations;

c) The applicant must submit an explanation of the subject matter sought to be protected and the content of changes compared to the original application when filing a split application;

d) The original application (after being split) continues to be processed according to the application processing procedure or according to the application amendment procedure.

2. Withdrawal of industrial property registration applications according to the provisions of Article 116 of the Intellectual Property Law is carried out as follows:

a) Withdrawal of application must be made by the applicant himself or by a representative authorized by the applicant through a written statement. For applications submitted through a representative, the authorization document must clearly state the authorization to withdraw the application or must be accompanied by a letter specifying the application number to be withdrawn;

b) Within 02 months from the date of receipt of the request, the state management agency in charge of industrial property rights:

b1) Issue a notice accepting the withdrawal of the application in case the request to withdraw the application meets the provisions of Point a of this Clause and terminate the processing of the application, recording the withdrawal in the application file. A withdrawn industrial property registration application cannot be restored but can only be used as a basis to claim priority rights as prescribed in Clause 3, Article 116 of the Intellectual Property Law;

b2) Issue a notice of intention to refuse to accept the withdrawal of application in case the request to withdraw the application does not meet the provisions of Point a of this Clause and set a period of 02 months from the date of notice for the applicant to correct the deficiency;

b3) Issue a notice of refusal to accept withdrawal of application if the applicant does not correct the errors within the time limit specified in Point b2 of this Clause or corrects the errors but fails to meet the requirements.

3. The conversion of an invention registration application according to the provisions of Point dd, Clause 1, Article 115 of the Intellectual Property Law is carried out as follows:

a) Before the state management agency of industrial property issues a decision to refuse to accept an application, a decision to grant or refuse to grant a protection title, the patent applicant can change the request. issue an invention patent into a request for a utility solution patent or vice versa for all or part of the application, provided that the applicant must pay the application fee for the converted application according to regulations. . In case of conversion of part of an application, the applicant must carry out the application division procedure before requesting conversion;

b) After receiving a request to convert a valid application, the state management agency of industrial property continues to carry out procedures for processing the conversion application according to corresponding regulations, but does not carry out the procedures again. procedures have been carried out for the application before the request for conversion.

4. The third person requests the state management agency industrial property to conduct an appraisal of the content of the invention registration application according to the provisions of Article 113 of the Intellectual Property Law as follows:

a) Request for appraisal of the content of an invention registration application must be made according to Form No. 05 in Appendix I of this Decree;

b) Deadline for submitting a request for appraisal of the content of an invention registration application as prescribed in Clauses 1 and 2, Article 113 of the Intellectual Property Law;

c) The person requesting substantive appraisal of the patent application must pay the search fee and substantive appraisal fee according to regulations;

d) The request for substantive examination of patent application shall be notified to the applicant within 03 months from the date of receipt of the request;

d) In case the request for substantive appraisal is invalid, within 01 month from the date of receiving the request for substantive appraisal, the state management agency of industrial property shall notify and set a deadline. 02 months from the date of notification for the requester to appraise the content of correction of errors. In case the person requesting substantive appraisal does not correct errors within the set time limit or the correction of errors does not meet the requirements, the state management agency of industrial property shall notify the refusal to appraise the content of the application.

e) In case the request for substantive examination is valid, the state management agency of industrial property shall conduct a substantive appraisal of the application according to the provisions of Article 114 of the Intellectual Property Law and other legal regulations. relevant and notify the results of substantive examination of the application to the requester.

#### **Article 18. Recording changes of industrial property applicants**

1. Before the state management agency of industrial property issues a decision to refuse to accept an application, decide to grant or refuse to grant a protection title, the applicant can request the state management agency to on industrial property rights, recording the change of applicant on the basis of transfer, inheritance, succession or according to the decision of a competent authority.

2. Recording changes in applicants due to transfer of applications is done as follows:

a) Documents required to record changes due to transfer of application include:

a1) Request form to record the transfer of application according to Form No. 05 in Appendix II of this Decree;

a2) The industrial property application transfer document (original or certified copy) must have the main contents including the names and addresses of the transferor and the transferee; the transferred application number or information sufficient to identify that application;

a3) Copy of documents for payment of fees and charges according to regulations (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property);

b) The request to record changes due to transfer of multiple applications of the same applicant can be made in the same request form, provided that the examination fees correspond to the number of transfer applications requested;

c) Requests to record changes due to transfer of applications are handled as requests to amend or supplement applications according to the provisions of Article 16 of this Decree. In case the request to record changes due to transfer of a trademark application is submitted after notification of intention to grant a protection title, the trademark application must be re-examined and the transfer content announced. The requester must pay the application appraisal fee and publication fee according to regulations.

3. Recording changes in applicants due to inheritance, inheritance or decision of a competent authority is done as required on the basis of inheritance or inheritance of assets upon consolidation, merger or division of legal entities, joint venture, association, establishment of new legal entities of the same owner, conversion of business form or according to the decision of the Court or other competent authority. Procedures for requesting recording of changes in applicants in these cases are carried out as procedures for amending and supplementing applications as prescribed in Article 16 of this Decree.

## **Section 2. PCT APPLICATION AND HANDLING OF PCT APPLICATION**

### **Article 19. PCT application**

1. PCT Applications include PCT Applications originating in Vietnam and PCT Applications entering the national phase.

2. For PCT Applications originating in Vietnam, the applicant can submit the application through the state management agency of industrial property or directly to the International Bureau. Applications submitted directly to the International Bureau must be made in the language specified in the PCT and must meet the formality and content requirements specified in the PCT. Applications submitted through state management agencies of industrial property must be made in English, each application must be made in 1 copy and must meet the formality and content requirements specified in the PCT and the applicant must pay a preliminary examination fee, fees and charges in accordance with the provisions of the Regulations on implementation of PCT and the laws on fees and charges of the member countries designated in the PCT Application.

3. For PCT Applications that designate or select Vietnam, to enter the national phase, the applicant must submit to the state management agency of industrial property within 31 months from the priority date (if the application claims priority) or from the international filing date the following documents:

a) Request for Invention registration, made according to Form No. 01 in Appendix I of this Decree;

b) Copy of the international application (in case the applicant requests to enter the national phase before the international publication date);

c) Vietnamese translation of the specification and summary of the international application (publication version or original version as filed if the application has not been published and amended version and explanation of amendments, if the international application is amended under Article 19 and/or Article 34.2(b) of the PCT);

d) Copy of fee payment invoice (in case of payment of fees and charges via postal service or direct payment to the account of the state management agency of industrial property);

dd) Power of Attorney (in case the request is submitted through a representative).

#### **Article 20. Handling of PCT applications originating in Vietnam submitted through state management agencies of industrial property**

1. After receiving a PCT Application originating in Vietnam, the state management agency of industrial property is responsible for carrying out the following procedures:

a) Collect a fee for preliminary examination of the application;

b) Determine whether the claimed subject matter in the application is a state secret;

c) Notify the prescribed fees for the applicant to pay to the International Bureau and the international search office according to the provisions of the PCT;

d) Check and handle applications according to the provisions of the PCT;

dd) Transfer the application to the International Bureau and the international search office in cases where the application meets the formality requirements, full payment of fees according to national law are made in time and the claimed subject matter of the application is not a state secret;

e) No further work shall be proceeded if the claimed subject matter of the application is a state secret.

2. After the PCT application originating in Vietnam has been transferred by the state management agency of industrial property to the International Bureau, all transactions related to the application are carried out directly by the applicant with the International Bureau or competent authorities of PCT member countries designated in the application according to the provisions of the PCT.

#### **Article 21. Handling of PCT applications at the national stage**

PCT applications entering the national phase are handled as follows:

1. Claiming priority in PCT Applications at the national stage is processed in accordance with the PCT and the Regulations under the PCT. To enjoy priority, the applicant must:

a) Reaffirm the claim for priority rights in the Request;

b) Pay the fee to claim priority rights;

c) Submit Vietnamese translations of documents submitted to the International Bureau at the request of the state management agency of industrial property and necessary documents according to Rule 17.1(a) of the Regulations under the PCT.

2. The applicant can amend and supplement documents in the application. Amendments and supplements to documents in the application must comply with the following regulations:

a) Articles 28 and 41 of the PCT, Rules 52.1(b) and 78.1(b) of the Regulations under the PCT and provisions of Article 115 of the Intellectual Property Law;

b) Power of Attorney, documents transferring the right to file applications in the international phase (if any) must be submitted within 34 months from the priority date (if the application claims priority rights) or from international filing date;

c) Amended and supplemented documents submitted by the applicant to the state management agency of industrial property must be made in Vietnamese.

3. The time to start handling a PCT Application at the national stage is the first day of the thirty-second month from the priority date (if the application claims priority right) or from the international filing date. If the applicant makes a written request for early handling of the PCT Application at the national stage, the PCT Application will be handled before the deadline specified in this Clause in accordance with the provisions of Article 23.2 of the PCT.

4. The PCT application at the national stage is examined as to formality and substance according to the procedures prescribed for invention application filed to national route and is published within 02 months from the date of acceptance of application as to formality.

### **Section 3. APPLICATIONS AND HANDLING OF THE HAGUE APPLICATION**

#### **Article 22. Hague Application**

1. Hague Application includes Hague Application designating Vietnam and Hague Application originating in Vietnam.

2. For a Hague Application originating in Vietnam, the applicant may file the application through the state management agency of industrial property or directly to the International Bureau. Applications submitted to the International Bureau must be made in the language specified in the Hague Agreement and must meet the form and content requirements set forth in the Hague Agreement.

3. The Hague application filed through the state management agency of industrial property must be made in English, each application is made in 2 copies and must meet the requirements on form and content as prescribed under the Hague Agreement and the applicant must pay the international filing fees, fees and charges prescribed by the Hague Agreement and the Laws on fees and charges of the designated member countries.

#### **Article 23. Processing of Hague applications originating in Vietnam filed through state management agencies of industrial property**

1. In case the Hague Application originating in Vietnam is filed through the state management agency of industrial property, the state management agency of industrial property is responsible for carrying out the following procedures:

a) Collect international application transfer fees;

b) Notify the fee that the applicant needs to pay directly to the International Bureau according to the provisions of the Hague Agreement within 20 days from the date of receipt of the application;

c) Preliminary examination of the application form within 15 days from the date of receipt of the application;

d) In case of shortcomings are found, the state management agency of industrial property shall notify the applicant of the shortcomings in the application and set a deadline of 12 days from the date of notification for the applicant to fix;

dd) Transfer the Hague application originating Vietnam to International Bureau within 01 month from the date of receipt of the application.



2. The date the state management agency of industrial property receives the Hague application originating in Vietnam will be considered the date of filing the international industrial design application in case the International Bureau receives the application within 01 month from the date recorded on the application receipt stamp of the state management agency of industrial property.

3. After a Hague application originating in Vietnam has been submitted to the International Bureau, all transactions related to the application are carried out directly by the applicant with the International Bureau or competent agencies of the member countries of the Hague Agreement designated in the application under the provisions of the Hague Agreement.

#### **Article 24. Handling of Hague Applications designating Vietnam**

After receiving the notice from the International Bureau, the state management agency of industrial property shall handle the Hague Application designating Vietnam according to the following regulations:

1. The state management agency of industrial property shall examine as to substance the application as an industrial design application filed according to the national route, except for the cases specified in Clauses 2, 3, 4, 5, 6, 7 and 9 this Article. Within 06 months from the date the International Bureau issues the notice, the state management agency of industrial property shall make conclusion on the protectability of the industrial design in the application.

2. In case the industrial design in the application meets the protection criteria according to the provisions of Vietnamese law and the application has no shortcomings, the state management agency of industrial property shall carry out the following procedures:

a) Before the end of the 6-month period mentioned in Clause 1 of this Article, the state management agency of industrial property shall issue a decision on protection of an internationally industrial design in the application and record it in National Register of Industrial Property (Part of International Registration of Industrial Designs) and send to the International Bureau a declaration of acceptance of protection for international industrial designs according to the form of the International Bureau ;

b) Publish the decision in the Official Gazette of Industrial Property within 2 months from the date of issuance of the decision.

3. In case the industrial design does not meet the protection criteria or the application has shortcomings (lack of photos/drawings making the set of photos/drawings not fully disclose the design features of the industrial design or the international registration does not meet Vietnam's declarations or has information that needs to be verified, etc.), before the end of the 6-month period mentioned in Clause 1 of this Article, the state management agency of industrial property issues a notice of refusal according to the International Bureau's form, clearly stating the content and grounds for refusal, and send that notice to the International Bureau.

4. In cases where some industrial designs do not meet the protection criteria or the application still has shortcomings for some industrial designs (lack of photos/drawings making the set of photos/drawings not fully disclose the design features of the industrial design or the international registration does not meet Vietnam's declarations or has information that needs to be verified, etc.), before the end of the 6-month period mentioned in Clause 1 of this Article, the state management agency of industrial property shall carry out the following procedures:

a) Issue a refusal notice for industrial designs that do not meet protection criteria or have shortcomings according to the form of the International Bureau, clearly stating the content and grounds for refusal and send that notice to the International Bureau;

b) Issue a decision on protection for industrial designs that meet protection criteria and have no shortcomings, record them in the National Register of Industrial Property (Part of International Registration of Industrial Designs) and send to the International Bureau a Declaration of protection for international industrial designs according to the form of the International Bureau, clearly indicating the protection of industrial design;

c) Publish the decision in the Industrial Property Official Gazette within 02 months from the date of decision.

5. Within 03 months from the date the state management agency of industrial property issues a notice of refusal as prescribed in Clauses 3 and 4 of this Article, the applicant has the right to correct any shortcomings or respond to the refusal of the state management agency of industrial property. Correction of shortcomings or response to a refusal stated in the notice shall be carried out according to the same procedure as for an industrial design application filed in accordance with the national route, including regulations on filing application.

In the event that a Hague Application is intended to be rejected due to its failure to meet the requirements for unity of the application as provided for in Article 101 of the Intellectual Property Law, the applicant may remedy the aforesaid deficiency by requesting split one or several industrial designs in the above international application into one or more new applications. The state management agency of industrial property shall proceed with division of applications and issue decisions and announcements of new applications independently of the original application.

6. In case the applicant corrects shortcomings satisfactorily and/or overcome the refusal within 03 months specified in Clause 5 of this Article, the state management agency of industrial property shall perform the following procedures:

a) Issue a decision on protection of an international registration of industrial design for the industrial designs that satisfy the criteria for protection, and record it in the National Register of Industrial Property (Part of international registration of Industrial Designs) and send to the International Bureau a declaration of acceptance for protection of the international registration of industrial design following refusal according to the form of the International Bureau, clearly indicating that the industrial design is accepted for protection;

b) Publish the decision in the Official Gazette of Industrial Property within 2 months from the date of issuance of the decision.

7. By the end of the 3-month period mentioned in Clause 5 of this Article, the applicant does not correct or overcome the shortcomings, has no response to refusal or response is not appropriate for the refused industrial designs, the state management agency of industrial property shall issue a refusal decision for those industrial designs.

8. At the end of the 3-month period from the date of the International Bureau's notification of the Hague Application designating Vietnam, the applicant does not submit documents proving priority rights or submits documents proving priority rights but not approved by the state management agency of industrial property, the application is considered to have no claim for priority.

9. Procedures for appeal and appeal resolution against decisions mentioned in Clauses 2, 3, 4, 6 and 7 of this Article are implemented as for industrial design applications filed according to national route. In case, according to the result of appeal resolution some or all of the rejected industrial designs in the refusal decisions are accepted for protection, the state management agency of industrial property shall send the International Bureau declaration of acceptance of protection following refusal according to the International Bureau's form, which clearly indicates the industrial design accepted for protection.

10. In case of a third person's opinion on a Hague Application designating Vietnam before the date of issuance of the decision to accept protection, the third person's opinion is considered a reference source of information for examination of the Hague application designating Vietnam.

#### **Section 4. MADRID APPLICATION AND HANDLING OF MADRID APPLICATION**

##### **Article 25. Madrid Application**

1. Madrid Application includes Madrid Application originating in Vietnam and Madrid Application designating Vietnam.

2. For Madrid Applications originating in Vietnam, the applicant must submit them through the state management agency of industrial property.

3. Madrid application originating in Vietnam shall include the following documents:

a) Request for international registration of a mark of Vietnamese origin according to Form No. 01 in Vietnamese in Appendix II of this Decree;

b) 02 copies of MM2 Application form according to the form of the International Bureau in English or French;

c) 02 trademark samples identical to the trademark in the application filed in Vietnam (basic application) or trademark registration certificate (basic registration);

d) 02 copies of MM18 Declaration forms in English (if the application specifies the United States);

dd) Power of Attorney in Vietnamese (in case the application is submitted through a representative);

e) Payment voucher of fees for carrying out procedures for international registration of trademarks of Vietnamese origin;

g) Other relevant documents (if necessary).

4. Madrid applications originating in Vietnam must meet the formality and content requirements as prescribed. The applicant must fill in the information in the Request completely, accurately according to regulations, consistent with the information recorded in the basic application or basic registration.

##### **Article 26. Handling of Madrid Applications originating in Vietnam and related requirements**

1. After receiving the Madrid Application originating in Vietnam, the state management agency of industrial property is responsible for examine to determine whether the application meets the requirements as prescribed in Clauses 3 and 4 of Article 25 of this Decree or not and carry out the following procedures:

a) In case the application has shortcomings, the state management agency of industrial property shall notify the applicant to correct the shortcomings. In case the applicant does not correct the shortcomings within 03 months from the notice date by the state management agency of industrial property the application shall be considered withdrawn;

b) In case the application has no shortcomings or has shortcomings but the applicant has corrected the shortcomings satisfactorily, the state management agency of industrial property will issue a notice of fees and charges to the applicant to pay directly to the International Bureau, sign and confirm the application and transfer the application to the International Bureau within 15 days from the date of notice of fees and charges;

c) The date the state management agency of industrial property receives the Madrid Application originating in Vietnam will be considered the international registration date of that application in case the International Bureau receives the application within 02 months from the date recorded on the application receipt stamp by the state management agency of industrial property. In case the application is not completed and sent to the International Bureau within the above time limit, the date of receipt of the application at the International Bureau will be considered the date of international registration.

2. After the Madrid Application originating in Vietnam is submitted to the International Bureau, the state management agency of industrial property notifies the applicant and continues processing (in coordination with the applicant, if necessary) notices, requirements from the International Bureau or other matters related to the application (if any).

3. After a Madrid Application originating in Vietnam is issued an international registration number, requests for procedures such as the subsequent designation (expanding the protected territory), amending the name and address of the internationally registered owner, limiting the list of goods and services, renewing the validity of international registration, appointing representatives, changing representatives, recording transfer of international registration, etc. can be done directly with the International Bureau or through the state management agency of industrial property. In case of filing through the state management agency of industrial property, the applicant needs to submit the following documents:

a) Request according to Form No. 02 in Vietnamese in Appendix II of this Decree;

b) 02 corresponding requests according to the form of the International Bureau;

c) Power of Attorney in Vietnamese (in case the request is submitted through a representative);

d) Fee payment invoice of examination for amendment, transfer, renewal, territory expansion, limitation of the list of goods and services, termination or invalidation of internationally registered trademarks originating in Vietnam etc...;

d) Other relevant documents (if necessary).

4. After receiving the requests specified in Clause 3 of this Article, the state management agency of industrial property shall carry out the following procedures:

a) In case the requested dossier contains shortcomings, the state management agency of industrial property shall notify the applicant to correct the shortcomings. In case the applicant does not correct the shortcomings within 03 months from the date the state management agency of industrial property issues the notice, the request will be considered withdrawn.

b) In case the requested dossier has no shortcomings or has shortcomings but the applicant has corrected the shortcomings satisfactorily, the state management agency of industrial property will issue a notice of fees to the applicant to pay directly to International Bureau, sign to confirm the request and transfer the request to the International Bureau within 10 days from the date of fee notice.

5. In case of request to renew international registration submitted through the state management agency of industrial property, the applicant needs to submit it no earlier than 06 months and no later than 01 month from the expiration date of international registration. If a renewal request of the international registration is made during the grace period, the request dossier must be submitted to the state management agency of industrial property no later than 01 month from the date of expiration of the grace period.

## **Article 27. Handling of Madrid Applications designating Vietnam**

1. After receiving notice from the International Bureau about the Madrid Application designating Vietnam, the state management agency of industrial property shall conduct substantive examination of the application as for a trademark application filed according to the national route, except for the cases specified in Clauses 3 and 10 of this Article. Within 12 months from the date the International Bureau issues the notice, the state management agency of industrial property concludes the trademark's protectability.

2. For trademarks that meet the protection criteria prescribed by Vietnamese law, the state management agency of industrial property carries out the following procedures:

a) Before the end of the 12-month period mentioned in Clause 1 of this Article, the state management agency of industrial property rights shall issue a decision to accept the protection of an internationally registered trademark in Vietnam, recording it in the Book of National registration of industrial property (International Registered Trademarks Section) and sending to the International Bureau a declaration of protection;

b) Publish the decision in the Industrial Property Official Gazette within 02 months from the date of decision.

The scope (volume) of protection is determined according to the content requested in the international trademark registration recorded by the International Bureau and accepted by the state management agency on industrial property.

3. For trademarks containing part or all of the goods or services that do not meet protection criteria, or trademarks that meet protection criteria but international registration has shortcomings (lack of regulations on trademark use for collective, certification mark, lack of photos or drawings showing three-dimensional perspective view of the mark, etc.), then before the end of the 12-month period mentioned in Clause 1 of this Article, the state management agency of industrial property issues a notice of provisional refusal, clearly stating the content and reasons for the refusal, and send that notice to the International Bureau.

4. Within 03 months from the issuing date of the provisional refusal in part or in whole of the list of goods or services by the state management agency of industrial property, the applicant has the right to correct the shortcomings or respond to the refusal.

Correction of shortcomings or response to provisional refusal is carried out according to the same procedures as for trademark applications filed according to the national route, including regulations on filing the application.

5. In case the state management agency of industrial property intends to refuse partially or totally the list of goods and services (stated in the provisional refusal notice), within the stated 3-month period in Clause 4 of this Article, if the applicant overcomes the shortcomings and/or the partially or totally provisional refusal with respect to those goods or services, the state management agency of industrial property shall carry out the following procedures:

a) Make a decision to accept the protection of the international trademark in Vietnam with the scope (volume) of protection corresponding to the goods and services that meet the protection criteria; recorded in the National Register of Industrial Property (International Registration Trademark Section); and send to the International Bureau a declaration of protection following a provisional refusal;

b) Publish the protection decision in the Industrial Property Official Gazette within 02 months from the decision date.

6. In case the state management agency of industrial property intends to refuse a part of the list of goods and services (stated in the provisional refusal notice), by the end of the 3-month period specified in Clause 4 of this Article, if the applicant does not correct or overcome the shortcoming, has no response

or the response to the provisional refusal is not appropriate, the state management agency of industrial property shall similarly apply the procedures specified in Clause 5 of this Article only to goods and services that meet protection criteria (goods and services not mentioned in the provisional refusal notice).

7. In case the state management agency of industrial property intends to refuse the total list of goods and services (stated in the provisional refusal notice), by the end of the 3-month period specified in Clause 4 of this Article, the applicant does not correct or overcome the shortcomings, has no response or response is not appropriate, the state management agency of industrial property shall issue a refusal decision to the international trademark registration in Vietnam and send to the International Bureau a notice confirming the total refusal.

8. Appeals and appeal resolution procedures against refusal decisions mentioned in Point a, Clause 2, Clauses 5, 6 and 7 of this Article are implemented as for trademark applications filed according to the national route if there are grounds to believe that the decisions do not comply with legal regulations on content and promulgation order. The results of appeal resolution are notified to the applicant by the state management agency of industrial property. According to the appeal resolution results the refused part of or the total list of goods and services in the refusal decisions are accepted for protection or there is a change in the excluded elements (disclaimed elements from separate protection), the state management agency of industrial property shall send to the International Bureau a further decision affecting trademark protection according to the International Bureau's form on the corresponding contents.

9. From the protection date of international registration trademark in Vietnam, at the request of the trademark owner, the state management agency of industrial property shall issues certificate of international trademark registration protection in Vietnam with condition that the requester pays fees and charges according to regulations.

10. From the date the Madrid Application is published in the Official Gazette by the International Bureau until the date before the issuing of protection decision, or by the end of 12 months from the date the International Bureau notifies the application designating Vietnam, depending on whichever comes earlier, if a third person has an opinion on the Madrid Application designating Vietnam, this opinion will be considered a reference source of information during the handling of the application.

#### **Article 28. Conversion of international trademark registration into application filed according to national route**

1. In case the international trademark registration in Vietnam of a trademark owner who is an individual or organization belonging to a member of the Madrid Protocol is invalidated according to the provisions of Article 6 of the Madrid Protocol, that individual/organization has the right to file conversion application to the state management agency of industrial property to register the same mark for a part or all of the goods and services in the list that was recorded in the international trademark registration but was invalidated according to the provisions of Article 9quinquies of the Madrid Protocol. A converted trademark registration application shall be accepted if it meets the following conditions:

a) The application is filed within 03 months from the date of recording in the International Register that the corresponding international registration has become invalid;

b) The international registration has never been the object of refusal, termination or total cancellation in Vietnam;

c) The application is made according to Form No. 03 in Appendix II of this Decree (in which the list of goods and services in Vietnamese in the conversion application must be less than or equal to the list of invalid goods and services in the corresponding international registration);

d) The application meets all other formal requirements for trademark registration applications according to Vietnamese law;

dd) The applicant pays all fees and charges as prescribed as for trademark registration applications filed according to the national route, except for the case specified in Point b, Clause 2 of this Article.

The trademark application resulted from conversion is allocated the same filing date as of the international registration date or the subsequent designation date (in case of subsequent designation in Vietnam). In case an international registration enjoys priority rights under international treaties, the trademark application resulted from conversion will have the corresponding priority rights, unless there are grounds for rejection.

2. The state management agency of industrial property shall examine the trademark application resulted from conversion according to the regulations on conversion conditions stated in Clause 1 of this Article and according to the following principles:

a) For formality that have been accepted by the International Bureau in the corresponding international registration, the state management agency of industrial property will not re-examine, except in cases where the application has shortcomings (lack of regulations on the use of collective marks, regulations on the use of certification marks, lack of photos or drawings showing the three-dimensional perspective view of the mark, etc.). The state management agency of industrial property shall issue a refusal decision to an application in case the application does not meet the conditions specified in Clause 1 of this Article.

b) For a trademark application resulted from conversion from an international registration that has been registered in Vietnam, the state management agency of industrial property does not re-examine as to substance. In case the application meets the conversion conditions specified in Clause 1 of this Article, the state management agency of industrial property shall carry out procedures to notify the intention to grant a protection title and decide to grant the protection title, record in the National Register of Industrial Property, publish the granting decision in the Industrial Property Official Gazette as for applications filed according to the national route.

c) For trademark applications resulted from conversion that meet the formality requirements and do not fall into the cases specified in Point b of this Clause, the state management agency of industrial property shall carry out procedures to accept application as to formality, publish application, examine as to substance and subsequent procedures as for trademark registration applications filed according to the national route.

## **Section 5. PROTECTION TITLE**

### **Article 29. Amending information on protection titles, changing information in the National Register of Industrial Property**

1. The protection certificate records information as prescribed in Clause 1, Article 92 of Intellectual Property Law and according to the form in Appendix II of this Decree. Protection titles are issued in electronic and paper versions (in case the applicant requests a paper copy). Protection title holders, organizations and individuals permitted by the State to exercise the right to register geographical indications have the right to request the state management agency of industrial property to record changes in information on the protection certificate in the following cases:

a) Change in name and address of the protection title holder; geographical indication management organization; name and nationality of the author of the invention, industrial design, layout design;

b) Change of protection title holders (transfer of ownership due to inheritance, merger, division, separation, consolidation, joint venture, association, establishment of a new legal entity of the same owner, change of form of business or according to the decision of the Court or other competent authority);

c) Amend the description of specific characteristics of products bearing geographical indications, geographical areas corresponding to geographical indications, regulations on use of collective marks, regulations on use of certification marks.

The person who requests to record changes of information on the protection title must pay the examination fee for the request to amend the protection title, the registration fee and the publication fee for the decision to record the amendment to the protection title.

2. Protection title holders, organizations and individuals permitted by the State to exercise the right to register geographical indications have the right to request the state management agency of industrial property to record industrial property representative of the protection title holder in the National Register of Industrial Property. The person requesting the recording of a change in the industrial property representative organization must submit a written power of attorney from the protection title holder and an examination fee for the recordal request, a registration fee and a publication fee for the decision to record a change of industrial property representative according to regulations.

3. The owner of a protection title has the right to request the state management agency of industrial property to narrow the scope of protection according to the provisions of Clause 3, Article 97 of the Intellectual Property Law in the following cases:

a) Request to reduce one or several goods, services or classes of goods and services in the list of goods and services recorded in the Trademark Registration Certificate or eliminate small details that are disclaimed elements (not protect separately) but does not change the distinctiveness of the mark stated in the Trademark Registration Certificate;

b) Request to reduce one or several independent or dependent claims within the set of claims recorded in the Patent, Utility Solution Patent;

c) Request to eliminate one or several industrial design variations, one or several products in the set of products in the industrial design patent.

The person requesting to narrow the scope of protection must pay the examination fee for the request, the registration fee and the fee for publishing the decision to amend the protection title.

4. Depending on the content that needs to be amended as prescribed in Clauses 1, 2 and 3 of this Article, the application for amendment includes 01 set of the following documents:

a) Request form for amendment made according to Form No. 06 in Appendix II of this Decree, clearly stating the request for recording changes. An amendment request declaration can request the amendment of multiple protection titles if they have the same amended content, provided that the requester must pay the prescribed fee for each protection title;

b) Original protection title in case the protection title is issued in paper form;

c) Documents confirming the change of name and address (original or certified copy); decision to change name and address; business registration license recording the change of name and address; other legal documents proving the change of name and address (original or certified copy) if the requested amendment is name and address;

d) Documents proving the transfer of ownership rights as prescribed in Point b, Clause 1 of this Article (documents proving inheritance, merger, division, separation, consolidation, joint venture, association, establishment of a new legal entity of the same owner, conversion of business form or according to a decision of the Court or another competent authority), if the requested amendment is the protection title holder;

d) Documents detailing the amended content;

e) 05 sets of photos or drawings of the amended industrial design (for amendment of industrial design); 02 copies describing the specific characteristics of the product bearing the geographical indication, a map of the geographical area corresponding to the revised geographical indication (for amendment of geographical indication); 02 copies of regulations on use of collective marks, 02 copies of regulations on



use of amended certification marks (for amendment of collective mark or certification mark); 05 trademark samples (for amendment of trademark specimen according to Point a, Clause 3 of this Article);

g) Power of Attorney (in case the request is submitted through a representative);

h) Copy of fee payment invoice (in case of payment of fees and charges via postal service or direct payment to the account of the state management agency of industrial property).

5. Requests to amend protection titles and record changes to industrial property representative organizations in the National Register of Industrial Property are handled as follows:

a) Within 02 months from the date of receipt of the request, the state management agency of industrial property must consider the request to amend the protection title according to Points a and b, Clause 1 of this Article. If the request is deemed valid, the state management agency of industrial property shall issue a decision to amend the protection title, record it in the protection title, register and announce the decision to amend the protection title in the Industrial Property Official Gazette within 60 days from the date of decision. In case the request to amend the protection title has shortcomings or invalid, the state management agency of industrial property shall issue a notice of intention to refuse the amendment request, clearly stating the reason and setting A period of 02 months from the date of notification for the requester to correct errors or make objections. If at the end of the set time limit the requester does not correct the errors or the correction of errors is unsatisfactory, there is no objection or there is an objection that is not valid, the state management agency of industrial property issue a decision to refuse the request to amend the protection title;

b) For requests to amend protection titles as prescribed in Point c, Clause 1 and Clause 3 of this Article, the procedure for re-examination of the corresponding application is conducted according to the provisions of Article 114 of the Intellectual Property Law. and other relevant legal regulations. The re-evaluation time limit does not count towards the time limit for processing requests to amend protection certificates;

c) Within 02 months from the date of receipt of the request, the state management agency of industrial property shall consider the request to record the change of industrial property representative organization in the National Register of Property Rights. industrial property according to the provisions of Clause 2 of this Article. If the request is deemed valid, the state management agency of industrial property shall issue a decision to record the change in the industrial property representative organization in the National Register of Industrial Property and register it. registered and published in the Industrial Property Official Gazette within 60 days from the date of decision. In case the request for recording a change in an industrial property representative organization has shortcomings or invalid, the state management agency of industrial property shall issue a provisional refusal for the request, stating clearly state the reason and set a time limit of 02 months from the date of notification for the requester to correct the shortcomings or make objections. If at the end of the set time limit the requester does not correct the shortcomings or the correction is unsatisfactory, no objection submitted or the submitted objection is not valid, the state management agency of industrial property shall issue a decision to refuse to record changes to the industrial property representative organization.

6. In case of detecting any defect in the protection title, the state management agency of industrial property shall, on its own or upon the request of the person who discovered the defect, revoke the defective protection title and re-grant the protection title with amended information. The owner of the protection title must pay the examination fee of the request to amend the protection title according to the provisions of Clause 1, Article 97 of Intellectual Property Law and the publication fee for the amended information in cases the defective published protection title is due to the fault of the protection title holder. If the defect is due to the fault of the state management agency of industrial property, the protection title holder does not have to pay that fee.

7. The state management agency of industrial property issues duplicates of protection titles and re-grants protection titles/duplicates of protection titles in the following cases:

- a) In case industrial property rights are jointly owned, the protection title will only be granted to the first person in the list of joint applicants. Other co-owners can request the state management agency of industrial property to issue a duplicate of the protection title, if they pay the fees for the duplicate;
- b) In case a protection title/copy of the protection title is lost or damaged, torn, dirty, faded to the point of being unusable, or disassembled and unable to keep the seal, the industrial property rightsholder granted the protection title/duplicate of protection title can request the state management agency of industrial property to re-grant the protection title/duplicate of protection title;
- c) Requests for issuance of duplicates of protection titles, re-grant of protection titles/duplicates of protection titles must be made in writing, except for cases already stated in the request form at filing for an industrial property application. The request dossier includes 01 set of the following documents:
- c1) Declaration requesting grant of duplicate protection title, re-issuance of protection title/duplicate of protection title is made according to Form No. 09 in Appendix II of this Decree;
- c2) 02 trademark specimens, 02 sets of photos or 02 sets of industrial design drawings identical to the brand sample, set of photos or industrial design drawings in the original protection certificate;
- c3) Power of attorney (in case the request is submitted through a representative);
- c4) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property);
- d) Handling requests for issuance of duplicates of protection titles, re-grant of protection titles/duplicates of protection titles:
- d1) Within 01 month from the date of receipt of the request, the state management agency of industrial property must process the request for issuing a duplicate of the protection title, re-grant the protection title/duplicate of the protection title. In case request meets the provisions of Points a, b and c of this Clause, the state management agency of industrial property issues a decision to grant a duplicate of the protection title, a decision to re-grant a protection title/duplicate of the protection title and records in the registration section of the corresponding protection title in the National Register of Industrial Property;
- d2) The content of the duplicate of the protection certificate fully shows the information of the corresponding protection certificate and must be accompanied by the instruction "Duplicate". The content of the re-granted protection title/duplicate of the protection title shows all the information of the first-time granted protection title/duplicate of the protection title and must be accompanied by the instruction "Re-granted Duplicate". The state management agency of industrial property shall announce the re-granting of the protection title/duplicate of the protection title in the Industrial Property Official Gazette within 60 days from the date of decision;
- d3) In case the request for granting a duplicate of the protection title, re-granting the protection title/duplicate of the protection title does not meet the requirements of Point c of this Clause, the state management agency of industrial property issue a notice and set a time limit of 02 months from the date of notification for the requester to correct shortcomings or make objections. If at the end of the above time limit, the requester does not correct the shortcomings or the correction is unsatisfactory, no objection was submitted or the submitted objection is not valid, the state management agency of industrial property issue a decision to refuse to grant a duplicate of the protection title, a decision to refuse to re-grant the protection title/duplicate of the protection title, clearly stating the reason.

8. Procedures for granting duplicates/re-granting of Certificate of registration of contracts for transfer of rights to use industrial property objects are applied similarly to the procedures stated in Clause 7 of this Article.

### **Article 30. Maintaining the validity of patent/utility solution protection titles**

1. Dossier requesting to maintain the validity of an invention/utility solution protection certificate includes the following documents:

- a) Request form according to Form No. 07 in Appendix II of this Decree;
- b) Power of Attorney (in case the request is submitted through a representative);
- c) Copy of fee and charge payment invoice (in case of payment of fees and charges via postal service or direct payment to the account of the state management agency of industrial property).

2. Request to maintain the validity of the protection title and the examination fee of the request to maintain the validity, the fee for maintaining the validity and the fee for using the protection title, registration fee and publication fee must be paid to the state management agency of industrial property no later than 06 months before the end of the effective period. This request can be submitted after the deadline specified above but must not exceed 06 months from the end of the previous validity period and the protection title holder must pay a surcharge for each late month according to the provisions of the Law.

3. Within 01 month from the date of receipt of the dossier requesting to maintain the validity of the protection title and the fees and charges specified in Clauses 1 and 2 of this Article, the state management agency of industrial property reviews the request dossier and carries out the following procedures:

- a) In case the dossier is valid, issue a notice of maintaining the validity of the protection title, record in the National Register of Industrial Property and publish in the Industrial Property Official Gazette within 60 days from the date of notification;
- b) In case the dossier is incomplete or invalid, issue a notice of provisional refusal, clearly stating the reason and setting a period of 02 months from the date of notice for the applicant to correct the shortcomings or make objections. If at the end of the set time limit the applicant does not correct the shortcomings or the correction is unsatisfactory, no objection was submitted or the objection is not valid, the state management agency of industrial property shall issue a decision to refuse to maintain the validity of the protection title.

### **Article 31. Extension of validity of industrial design patents and trademark registration certificates**

1. An industrial design patent may be renewed at most 02 consecutive times, each time for 05 years. In case the protected industrial design has many variations, the patent may be extended for all or some variations, including the basic variation. The trademark registration certificate can be renewed many times consecutively, each time for 10 years for all or part of the list of goods and services.

2. Dossier requesting extension of validity of industrial design patent or trademark registration certificate includes the following documents:

- a) Request form requesting extension of validity made according to Form No. 07 in Appendix II of this Decree;
- b) Original industrial design patent, trademark registration certificate (in case the protection title is issued in paper form and there is a request to record the extension in the protection title);
- c) Power of Attorney (in case the request is submitted through a representative);
- d) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

In one dossier, it is possible to request an extension of validity for one or more protection titles if they have the same type of subject matter and the same owner.

3. Extension request documents and extension request examination fees for extending the validity of protection titles, fees for using protection titles, registration fees and fees for publishing the decision to extend the validity of protection title must be submitted by the industrial design patent holder or trademark registration certificate holder to the state management agency of industrial property within 06 months from the date of the industrial design patent or trademark registration certificate expires. The request for extension can be submitted after the deadline specified above but must not exceed 06 months from the date the protection title expires and the protection title holder must pay a fee for each late month according the law.

4. Within 01 month from the date of receipt of the extension request dossier, the state management agency of industrial property shall review the dossier and carry out the following procedures:

a) If the application is valid, issue a decision to extend the validity of the protection title, record in the protection title (if required), register and publish the decision to extend the validity of the industrial design patent or trademark registration certificate in the Industrial Property Official Gazette within 60 days from the date of decision;

b) Issue a notice of provisional refusal for the extension, clearly stating the reason and setting a time limit of 02 months from the date of notice for the applicant to correct the shortcomings or make objections if falling into one of the following cases:

b1) The application for extension is invalid or is not submitted according to prescribed procedures;

b2) The person requesting the extension is not the owner of the corresponding Industrial Design Patent or Trademark Registration Certificate.

If at the end of the set time limit the applicant does not correct the shortcomings or the correction are unsatisfactorily, no objection was submitted or the objection is not valid, the state management agency of industrial property shall issue a decision to refuse to extend the validity of industrial design patents or trademark registration certificates.

c) After the extension procedure has been completed, in case the owner of an industrial design patent or trademark registration certificate requests the state management agency of industrial property to record the extension decision effective in the protection title, the protection title owner must carry out procedures to amend the protection title and pay fees according to regulations.

### **Article 32. Termination and invalidation of protection titles**

1. Organizations and individuals requesting termination or invalidation of protection titles according to the provisions of Clause 4, Article 95, Clause 4, Article 96 of the Intellectual Property Law must pay the request fee and examination fee, registration fees and publication fees for the decision to terminate or invalidate the protection title.

2. A request to terminate or invalidate a protection title must comply with the following regulations:

a) In one application, it is possible to request the termination or invalidation of one or more protection titles if there is the same argument, provided that the requester must pay fees and charges as prescribed for each protection title;

b) The application for termination or invalidation of the protection title includes 01 set of the following documents:

b1) Declaration requesting termination or invalidation of protection title according to Form No. 08 in Appendix II of this Decree;

b2) Evidence (if any);

b3) Power of Attorney (in case the request is submitted through a representative);

b4) Explanation of the reason for the request (clearly stating the protection title number, reason, legal basis, content of request to terminate or invalidation, request to terminate or invalidate a part or all of the validity of the protection certificate) and related documents;

b5) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

3. Applications for termination or invalidation of protection titles are handled as follows:

a) Applications for termination or invalidation of protection titles are handled according to the provisions of Article 95, Article 96, Clause 3 of Article 220 of Intellectual Property Law and according to the provisions of this Article. For requests to invalidate protection titles, the state management agency of industrial property shall re-examine the content of the corresponding application according to the provisions of Article 114 of the Intellectual Property Law and related regulations;

b) In case a third-party requests termination or invalidation of a protection title, within 01 month from the date of receipt of the request, the state management agency of industrial property shall notify in writing of the third person's opinion to the protection title holder, which sets a time limit of 02 months from the date of notice for the protection title holder to give their opinion. The state management agency of industrial property can organize a direct exchange of opinions between a third person and the relevant protection title holder;

c) Based on the consideration of the opinions of the parties, the state management agency of industrial property shall issue a decision to terminate/invalidate a part or all of the validity of the protection title or notify the refusal to terminate/invalidate a part or all of the validity of the protection title according to the provisions of Clause 5, Article 95 and Clause 5, Article 96 of the Intellectual Property Law;

The time limit for decision and notification mentioned in this point is 03 months from the end of the 02-month period specified in point b of this clause or the end of the 03-month period specified in point a clause 4, point a clause 5 Article on which the protection title owner has no opinion or from the date of receiving the protection title owner's opinion. This period can be extended by a maximum of 03 months if the protection title holder has a different opinion than the person requesting termination or invalidation of the protection title.

In case the owner of a protection title declares to relinquish industrial property rights according to the provisions of Clause 3, Article 95 of the Intellectual Property Law, the above time limit is 15 days from the date of receipt of the request.

The time to carry out other related procedures necessary to resolve the request to terminate or invalidate the protection certificate is not included in the above time limit.

d) If the requester or the organization/individual prescribed in Point b of this Clause do not agree with the decision or the notice to terminate or invalidate the protection title of the state management agency of industrial property mentioned in Point c of this Clause, they have the right to appeal that decision or notice according to the provisions of law on complaints related to industrial property procedures;

dd) The decision to terminate or invalidate the protection title is recorded in the National Register of Industrial Property and published in the Industrial Property Official Gazette within 60 days from the date of decision.

4. Applications for termination or invalidation of international trademark registration are handled as follows:

a) For a request to terminate or invalidate international trademark registration under the Madrid Agreement or Madrid Protocol submitted by a third party, the state management agency of industrial property shall notify the contents of the request to terminate or invalidate international trademark registration to the trademark owner through the International Bureau, which sets a period of 03 months from the date of notification for the trademark owner to have an opinion;

b) International trademark registration may be terminated or invalidated for a part or the entire list of goods and services;

c) In case the state management agency of industrial property issues a decision to terminate or invalidate the international trademark registration for a part or the entire list of goods and services and this decision is no longer a subject of administrative complaint or administrative lawsuit, the state management agency of industrial property shall issue a notice of termination or invalidation of international trademark registration according to the form of the International Bureau, specifying the list of goods and services to be terminated or invalidated and sending this notice to the International Bureau;

d) Other relevant regulations on handling requests to terminate or invalidate trademark protection titles based on trademark applications filed through the national route are applicable to the handling of requests of termination or invalidation of international trademark registration.

5. Applications for termination or invalidation of international registration of industrial designs are handled as follows:

a) For a request to terminate or invalidate the international registration of an industrial design under the Hague Agreement submitted by a third party, the state management agency of industrial property shall notify the content of the request to the industrial design patent holder through the International Bureau, which sets a time limit of 03 months from the date of notification for the design patent holder to have an opinion;

b) International registration of industrial designs may be invalidated for some or all industrial designs in that registration;

c) In case the state management agency of industrial property issues a decision to invalidate the international registration for some or all industrial designs and this decision is no longer the subject of an administrative complaint or an administrative lawsuit, the state management agency on industrial property rights shall issue a notice of invalidation of the international registration of industrial designs according to the form of the International Bureau, clearly indicating the industrial designs invalidated and this notification is sent to the International Bureau;

d) Other relevant regulations on handling requests to terminate or invalidate industrial design protection titles issued through national route are applicable for requests to terminate or invalidate international registration of industrial designs.

## **CHAPTER II RIGHTSHOLDER, CONTENT, LIMITATION OF INDUSTRIAL PROPERTY RIGHTS**

### **Article 33. Industrial property rights holders**

1. Industrial property rights holders include organizations and individuals who own industrial property subject matters specified in Article 121 of the Intellectual Property Law or organizations and individuals whose ownership rights are transferred by the rightsholder.

2. In cases where protection titles for inventions, industrial designs, layout designs, and trademarks are granted to many organizations and individuals according to the provisions of Clause 2, Article 86, Clause 5, Article 87 and Clause 3, Article 90 of the Intellectual Property Law, industrial property rights are jointly owned by those organizations and individuals. Joint owners exercise ownership rights according to the provisions of civil law.

#### **Article 34. Scope of industrial property rights**

1. The scope of industrial property rights for inventions, industrial designs, layout designs, trademarks, and geographical indications is determined according to the scope of protection recorded in the National Register of Industrial Property, the International Register of Trademarks and the International Register of Industrial Designs or in the protection title of international registration of trademarks, decision of registered international industrial design.

2. The scope of rights to a trade name is determined according to the scope of trade name protection, including the trade name, business field and business territory in which the trade name is used legally by the entity bearing the trade name. Registering the name of a business organization or individual in business registration procedures is not considered use of that name but is only a condition for the use of that name to be considered legal.

3. The scope of rights to business secrets is determined according to the scope of protection of business secrets, including the collection of information that constitutes a business secret, arranged in an accurate and complete order to exploitable level.

4. Industrial property rights holders are entitled to rights and obligations according to the scope of protection under the conditions specified in Articles 132, 133, 133a, 134, 135, 136, 136a, 137 of Intellectual property Law.

#### **Article 35. Rights of authors of inventions, industrial designs, and layout designs**

1. The author's moral rights specified in Clause 2, Article 122 of the Intellectual Property Law are protected indefinitely.

2. The author's right to receive remuneration specified in Clause 3, Article 122 of the Intellectual Property Law is protected throughout the term of protection of inventions, industrial designs, and layout designs.

3. If there is no other agreement between the owner and the author, payment of remuneration must be made no later than 30 days from the date the owner receives payment due to transfer of use rights or no later than 90 days from the end of the fiscal year if the remuneration paid to the author is calculated according to the provisions of Point a, Clause 1, Article 135 of the Intellectual Property Law.

#### **Article 36. Responsibility for state management of signs indicating geographical origin**

1. People's Committees of provinces and centrally run cities preside over and coordinate with the Ministry of Agriculture and Rural Development and the Ministry of Industry and Trade to identify types of local specialties, product characteristics, and production processes of local specialties bearing geographical indications under the management of ministries, branches, and localities on the basis of local planning.

2. People's Committees of provinces and centrally run cities allow the use of place names and other signs indicating the geographical origin of local specialties to register collective marks and certification marks; directly or delegate or authorize the People's Committee of the district, town, provincial city, centrally run city, and specialized agencies under the People's Committee of the province and centrally run city to submit Geographical indication application for local specialties.

3. The Minister of Science and Technology provides guideline of criteria for determining place names and other signs indicating the geographical origin of products.

### **Article 37. Exercise of ownership rights to geographical indications**

1. For geographical indications of Vietnam, agencies and organizations have the right to manage geographical indications (hereinafter referred to as geographical indication management organizations) specified in Clause 4, Article 121 of Intellectual Property Law includes:

a) People's Committee of the province or centrally run city where the geographical area corresponds to the geographical indication in case the geographical indication belongs to a locality;

b) People's Committees of provinces and centrally run cities which are authorized representatives of other People's Committees of provinces and centrally run cities where the geographical area corresponds to the geographical indication in the case geographical indications belongs to many localities;

c) People's Committees of districts, towns, provincial cities, centrally run cities, specialized agencies under the People's Committees of provinces and centrally run cities are authorized by the People's Committees of provinces and centrally run cities decentralize and authorize the management of geographical indications;

d) Agencies and organizations are authorized to manage geographical indications by the People's Committees of provinces and centrally run cities, provided that such agencies and organizations represent the interests of all organizations and individuals granted the right to use geographical indications according to the provisions of Clause 4, Article 121 of the Intellectual Property Law.

2. Agencies and organizations that have the right to manage geographical indications as prescribed in Point d, Clause 1 of this Article are allowed to exercise the owner's rights to geographical indications specified in Clause 2, Article 123 and Article 198. of Intellectual Property Law.

3. For foreign geographical indications, the owner, the organization authorized to exercise the owner's rights to the geographical indication and the organization managing the geographical indication are determined according to the law of the origin country of that geographical indication.

### **Article 38. Exercise of geographical indication management rights of geographical indication management organizations**

1. Organizations managing geographical indications specified in Clause 1, Article 37 of this Decree are responsible for:

a) Develop and promulgate regulations on management of geographical indications;

b) Manage geographical indications according to the regulations they promulgate;

c) Prepare and publicize a list of organizations and individuals using geographical indications based on notices from those organizations and individuals. The list of organizations and individuals using geographical indications must be updated when there are any changes;

d) Organize and implement measures to manage the use of geographical indications by organizations and individuals producing products bearing geographical indications to ensure that products meet the standards of properties, specific quality and reputation consistent with the description of the specific characteristics of the product bearing the geographical indication;

d) Monitor and implement measures to prevent and prohibit acts of infringing upon rights to geographical indications; request competent authorities to handle according to regulations;

e) Report to the state management agency of industrial property on the status of geographical indication management every two years.



2. Regulations on management of geographical indications as prescribed in Point a, Clause 1 of this Article must meet the following conditions:

a) Regulations on management of geographical indications include the following main contents:

a1) Products bearing geographical indications: product name, product description (properties, specific quality of the product, production process, production area, etc.) corresponds to the content in the description of the specific properties of the product;

a2) Recordal of organizations and individuals using geographical indications: dossier requesting recordal of organizations and individuals using geographical indications includes recordal request and documents proving the organization or individual has production activities of products bearing geographical indications in the geographical area corresponding to the geographical indication and other documents, if necessary; reviewing documents, checking and evaluating the authenticity of documents, including compliance with the description of the specific characteristics of products bearing geographical indications (if necessary) and recording information of organizations and individuals to the list of organizations and individuals using geographical indications;

a3) Mechanism for checking and controlling the use of geographical indications: content of checking and controlling (geographic origin, specific properties and quality of the product, production process, etc.); inspection and control plan; tools and methods of inspection and control; agencies and organizations performing inspection, control, etc.;

a4) Rights and responsibilities of organizations and individuals using geographical indications: ensure the maintenance of specific characteristics, quality, and reputation of products bearing geographical indications; notify the geographical indication management organization to be recorded in the list of organizations and individuals using geographical indications before using the geographical indication; report to the geographical indication management organization on the situation of geographical indications usage on an annual basis, etc.;

a5) Rights and responsibilities of geographical indication management organizations in managing geographical indications;

a6) Funding for geographical indication management activities;

a7) Handling measures in case of violation of the Regulations.

b) Regulations on management of geographical indications must be consulted by organizations and individuals producing products bearing geographical indications before being promulgated.

c) Regulations on management of geographical indications do not include content that unreasonably restricts the legal use rights of geographical indications of organizations and individuals producing products bearing geographical indications.

### **Article 39. Confidentiality of agrochemical testing data**

1. Agrochemicals are chemical products used in the field of agriculture and rural development.

2. Agrochemical testing data is confidential if that data meets the conditions specified in Clause 1, Article 128 of the Intellectual Property Law and is requested by the applicant to be kept confidential when applying for a marketing authorization for agricultural products.

3. The agency competent to license the marketing authorization of agricultural products shall keep the testing data confidential as stated in Clause 2 of this Article.

#### **Article 40. Use of industrial property objects**

1. Product circulation acts specified in Point d, Clause 1, Point b, Clause 2 and Point b, Clause 7, Article 124 of the Intellectual Property Law include acts of selling, displaying for sale, and transporting products.
2. The actual use of a trademark sample that is different from the protected trademark specimen by the trademark owner or a person authorized by the trademark owner is also considered a use of the trademark according to the provisions of Clause 1 of this Article. Clause 5, Article 124 of the Intellectual Property Law if this difference is insignificant and does not change the distinctiveness of the mark.

#### **Article 41. Use of inventions in the name of the State**

1. The use of inventions on behalf of the State to serve public, non-commercial interests, serve national defense, security, disease prevention, treatment, nutrition for the people or meet urgent needs of society according to the provisions of Clause 1, Article 133 of Intellectual Property Law implemented by ministries, ministerial-level agencies or appointing other organizations and individuals to implement on the basis of issuing a decision on compulsory transfer. The right to use inventions is specified in Point a, Clause 1, Article 145 and Clause 2, Clause 1, Article 147 of the Intellectual Property Law. In the case of imported products, the products manufactured by the licensee under the production contract had already met the needs of national defense, security, disease prevention, treatment, nutrition for the people or other urgent needs of society, the patent holder is considered to have fulfilled the obligation to use according to the provisions of Article 136 of the Intellectual Property Law.
2. Procedures for issuing decisions on compulsory licensing of patents in case of using inventions on behalf of the State shall comply with the provisions of Articles 55 and 56 of this Decree.

#### **Article 42. Compensation to patent owners for delays in granting marketing authorization for pharmaceuticals**

1. In case the procedure for registering the first marketing authorization of a pharmaceutical product is delayed according to the provisions of Article 131a of Intellectual Property Law, after the pharmaceutical product is authorized for circulation, within 02 months from the date the applicant filed a request according to Form No. 02 in Appendix I of this Decree, the agency competent of marketing authorization of pharmaceuticals shall issue a confirmation of the delay in registration procedures for the marketing authorization of pharmaceuticals, clearly stating the delayed period.
2. In case the patent holder makes a request according to Form No. 03 in Appendix I of this Decree, accompanied by a confirmation document from the agency competent of marketing authorization of pharmaceuticals regarding the procedures being delayed according to the provisions of Clause 1 of this Article, the state management agency of industrial property shall notify the patent holder of the compensation and carry out the following procedures:
  - a) Not charge a maintenance fee for the patent for the period when the procedure for registration of marketing authorization of pharmaceuticals produced under that patent is delayed while processing the request to maintain validity;
  - b) In case the patent maintenance fee for that period has been paid, deduct the fee amount already paid during the processing of the request to maintain validity in the next period;
  - c) In case the patent owner does not continue to maintain the validity or the patent expires, refund the usage fee to the patent owner within 03 months from the date of receipt of complete request according to regulations.
3. For pharmaceuticals manufactured under many different Patents, the maintenance fees of all related Patents is free.

**Chapter III**  
**INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS AS RESULTS OF SCIENTIFIC AND TECHNOLOGICAL TASKS USING THE STATE BUDGET**

**Article 43. Right to register inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget**

1. Automatic assignment of the right to register inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget specified in Clauses 1 and 2, Article 86a of Intellectual Property Law means that the host organization has the right to register inventions, industrial designs, and layout designs when these subject matters are created in the process of performing scientific and technological tasks without the procedure of assigning registration rights of the representative rightsholder of the state.

2. The right to register inventions, industrial designs, and layout designs as the result of scientific and technological tasks invested by many capital sources, including the state budget specified in Clause 2 and Point b, Clause 3, Article 86a of the Intellectual Property Law are determined as follows:

a) The host organization of the task has the right to register inventions, industrial designs, and layout designs corresponding to the state budget investment. In case an invention, industrial design, or layout design is the result of a scientific and technological task in the field of national defense and security, the right to register belongs to the State and the representative rightsholder of the State according to the provisions of Clause 3 of this Article shall carry out registration;

b) Other organizations and individuals have the right to register inventions, industrial designs, and layout designs corresponding to their investment capital contribution.

3. The representative rightsholder of the State specified in Point c, Clause 3, Article 86a of the Intellectual Property Law is:

a) Minister of Science and Technology for national science and technology tasks, except for national science and technology tasks specified in Point b of this Clause;

b) Ministers, Heads of ministerial-level agencies, Government agencies, other central agencies, Chairman of the Provincial People's Committee for national-level science and technology tasks assigned; scientific and technological tasks approved by themselves;

c) Heads of agencies and organizations for scientific and technological tasks approved by themselves.

**Article 44. Obligation to notify and register inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget**

1. The date an invention, industrial design, or layout design is created according to the provisions of Clause 1, Article 136a of the Intellectual Property Law is the date the host organization receives the author's written report or knows about inventions, industrial designs, and layout designs that were created from scientific and technological tasks, whichever is earlier.

2. Within 01 month from the date the invention, industrial design, or layout design is created according to the provisions of Clause 1 of this Article, the host organization shall notify in writing the representative rightsholder of the State, clearly stating information about the invention, industrial design, layout design, need for registration and intended countries to apply for registration (if any). In case the registration procedures to establish rights to the above subject matters are not carried out, the host organization is responsible for notifying in writing the representative rightsholder of the State within 10 days before the end of the period prescribed in Clause 2, Article 136a of Intellectual Property Law.

3. Authors of inventions, industrial designs, and layout designs and the host organization are obliged to keep information about inventions, industrial designs, and layout designs confidential until the patent, industrial design or layout design application is filed or the representative rightsholder of the State publishes the content of the invention, industrial design, layout design according to the provisions of Clause 2, Article 133a of Intellectual Property Law.

4. Applications of patents, industrial designs, and layout designs that are the result of scientific and technological tasks using the state budget may only be transferred to organizations established under Vietnamese law or individual who is a Vietnamese citizen and permanently resides in Vietnam. Organizations and individuals receiving transfer of applications of patents, industrial designs, and layout designs must fulfill the corresponding obligations of the host organization according to the provisions of Intellectual Property Law and this Decree.

5. In the process of carrying out procedures for establishing industrial property rights according to the provisions of the intellectual property law for inventions, industrial designs, and layout designs that are the results of scientific and technology using state budget, the host organization has the following obligations:

a) Notify the agency managing science and technology tasks in writing about the results of the applications of patents, industrial designs, and layout designs within 07 working days from the date the state management agency of industrial property issue a decision/ notice of the results of such applications;

b) Within 07 working days from the end of the time limit specified in Clauses 1 and 2, Article 113 of Intellectual Property Law, notify the agency managing science and technology tasks in writing about the patent application considered withdrawn according to the provisions of Clause 3, Article 113 of Intellectual Property Law and clearly stating the reason.

c) Notify the agency managing scientific and technological tasks to carry out procedures for assigning the right to register inventions, industrial designs, and layout designs that are the results of scientific and technological tasks used State budget to other organizations and individuals as prescribed in Article 45 of this Decree in the following cases:

c1) An application of patent, industrial design, or layout design is refused as to formality, except in cases where the application is refused because the subject matter stated in the application is not patentable as patent, industrial designs, and layout designs according to the provisions of Articles 59, 64 and 69 of Intellectual Property Law;

c2) The application for patent, industrial design, or layout design is withdrawn before the application is published according to regulations.

**Article 45. Assigning registration rights of inventions, industrial designs, and layout designs resulting from scientific and technological tasks using the state budget to other organizations and individuals**

1. The representative rightsholder of the State assigns the scientific and technological task management agency to publish on the website or electronic portal for organizations and individuals wishing to request for the right to register inventions, industrial designs, and layout designs in the cases specified in Clause 1, Article 133a of Intellectual Property Law and the cases stated in Point c, Clause 5, Article 44 of the Decree.

2. Information disclosed under the provisions of Clause 1 of this Article includes names and technical fields of inventions, industrial designs, and layout designs that are the results of scientific and technological tasks; delivery method; information access.

3. Organizations and individuals who wish to obtain the right to register mentioned in Clause 1 of this Article can access detailed information about inventions, industrial designs, and layout designs that are

the results of scientific and technological tasks according to Clause 2 of this Article, if there is a written request to the agency managing science and technology tasks and a commitment to confidentiality and not to use the information for commercial purposes.

4. Organizations and individuals who wish to obtain the right to register mentioned in Clause 1 of this Article submit a request for assignment of the right to register patents, industrial designs, and layout designs according to Form No. 01 in Appendix III to the agency managing science and technology tasks.

5. The agency managing science and technology tasks is responsible for processing requests for registration rights according to the following regulations:

a) Check the validity of the application. In case the application is invalid, within 05 working days at the latest from the date of receipt of the application, the agency managing science and technology task must notify the organization or individual in writing and set a period of 10 days from the date of notification for organizations and individuals to correct the shortcomings;

b) Within 07 working days from the end of the publication period as prescribed in Clause 1, Article 133a of Intellectual Property Law, the agency managing science and technology tasks shall report to its representative rightsholder of the State to issue a decision to assign the right to register patents, industrial designs, and layout designs to qualified organizations and individuals;

c) In case there are many organizations and individuals requesting to assign the right to register an patent, industrial design, or layout design, all of which have valid applications, the representative rightsholder of the State shall notify the intention to assign the right to register jointly and all shall be named as the applicant for applications for registration of patents, industrial designs, and layout designs and set a time limit of 07 working days from the date of the notification for organizations and individuals to comment on the content of the notification. If at the end of the above time limit, the organization or individual submitting the application for assignment of rights has a written response disagreeing with the joint applicant's name or does not have a written response, then within 05 working days from the expiry date of the above time limit, the representative rightsholder of the State shall issue a decision to assign the right to register inventions, industrial designs, and layout designs to organizations and individuals that have written consent to notice of intend to assign rights.

6. Organizations and individuals receiving registration rights are obliged to submit registration applications to establish patent rights, industrial designs, and layout designs within 06 months from the date of receiving the assignment decision specified in Clause 5 of this Article and perform other corresponding obligations of the host organization according to the provisions of Intellectual Property Law and this Decree.

7. At the end of the 90-day period from the date of posting the notice according to Clause 1 of this Article, if the registration right is not assigned to the organization or individual in need, the representative rightsholder of the State shall assign the agency managing science and technology task to publish on the website or portal the content of inventions, industrial designs, and layout designs that are the results of scientific and technological tasks for organizations and individuals to exploit and use according to the provisions of law.

#### **Article 46. Implementation of industrial property rights and protection measures for inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget**

1. To ensure the implementation of industrial property rights and effective exploitation of patents, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget, the organization in charge of the granted protection titles to these subject matters is responsible for:

a) Apply appropriate measures to protect industrial property rights for those subject matters, including implementing necessary procedures to maintain and extend the validity of protection titles;

b) Identify and implement appropriate commercial exploitation measures.

2. Every year, the host organization granted a patent, industrial design, or layout design as a result of scientific and technological tasks using the state budget is obliged to submit a report to the agency managing science and technology tasks with the following contents:

a) Commercial exploitation's results, assessment of effectiveness of exploitation of inventions, industrial designs, and layout designs;

b) Total amount of money and profit that the host organization has received from the use, licensing, assignment, capital contribution of patents, industrial designs, layout designs and remuneration to author, profit distribution, accompanied by an independently audited financial report of the host organization;

c) Implemented enforcement measures.

**Article 47. Procedures for allowing other organizations and individuals to use inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget**

1. The reasonable time prescribed in Point a, Clause 3, Article 133a of Intellectual Property Law is determined to be 04 years from the date of filing a patent registration application or 03 years from the date of grant of a patent; after 03 years from the date of filing the application of industrial design, layout design or after 02 years from the date of issuance of the Industrial Design Patent, Certificate of Registration of Layout Design, whichever ends later.

2. Agencies competent to approve science and technology tasks according to the law on science and technology proactively or at the request of other organizations or individuals issue decisions permitting the use of patents, industrial designs, layout designs which are the results of scientific and technological tasks using the state budget when the cases specified in Clause 3, Article 133a of Intellectual Property Law occur based on consultation of opinion of the Ministry of Science and Technology.

3. The decision in Clause 2 of this Article must clearly state the scope and conditions for use by other organizations and individuals, including:

a) The right to use patents, industrial designs, and layout designs is exclusive or non-exclusive;

b) The right to use is only limited to a scope and duration sufficient to meet the objectives of the permission to use;

c) Organizations and individuals permitted to use by a competent authority may not transfer that right to others.

The decision to authorize usage is sent by the agency competent to approve scientific and technological tasks to the person permitted to use the invention, industrial design, layout design, the rightsholder and the state management agency of industrial property.

4. Organizations and individuals request permission to use inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using the state budget according to the provisions of Clause 2 of this Article. Submit documents to the competent authority for approval of science and technology tasks including the following documents:

a) Application for permission to use inventions, industrial designs, and layout designs that are the result of scientific and technological tasks using the state budget, made according to Form No. 02 in Appendix III of the Decree this decision;

b) Documents proving that the request for permission to use inventions, industrial designs, and layout designs that are the results of scientific and technological tasks using state budget are well-founded.

5. The agency competent to approve science and technology tasks is responsible for handling the request dossiers according to the following regulations:

a) Check the validity of the dossier: In case the request is invalid, within 05 working days from the date of receiving the request dossier, the competent authority must notify the organization or individual in writing and set a period of 20 days from the date of notification for the organization or individual to correct the shortcomings.

b) Within 07 working days from the date of receipt of valid dossier, the competent agency shall notify the request for permission to use patents, industrial designs, layout design to the rightsholder and set a maximum time limit of 01 month from the date of notification for the rightsholder to respond in writing, except for requests falling under the case specified in point b Clause 3, Article 133a of Intellectual Property Law, the competent authority is not required to notify the rightsholder.

c) After the above deadline, the competent agency shall process the request for permission to use and opinions of the rightsholder based on the documents and opinions provided by the parties. In case the request for permission to use a patent, industrial design, or layout design does not have a valid basis as prescribed in Clause 3, Article 133a of Intellectual Property Law, the competent authority shall approve the task. science and technology issue a refusal decision and clearly state the reasons for refusal. In case the request for permission to use an invention, industrial design, or layout design is deemed to have a valid basis, the agency competent to approve scientific and technological tasks shall issue a decision to permit the use. use.

6. The rightsholder has the right to request termination of permission to use when the basis for permission to use specified in Clause 3, Article 133a of Intellectual Property Law no longer exists and is not capable of re-emerging. Requests to terminate permission for use must be made in writing and sent to the agency competent to approve scientific and technological tasks, accompanied by supporting documents.

## **Chapter IV CONFIDENTIAL INVENTIONS**

### **Article 48. Confidential patent application**

1. Confidential invention registration applications must be submitted in paper form to the state management agency of industrial property in accordance with the provisions of Clauses 1 and 2, Article 89 of Intellectual Property Law.

2. The confidential patent application includes the following documents:

a) Documents prescribed in Article 100 of the Intellectual Property Law with confidential stamp according to the provisions of law on protection of state secrets (except for fee payment invoices);

b) Document certifying that the subject in the application is a state secret according to the provisions of Law on Protection of State Secrets.

3. Confidential patent applications are received if they contain the minimum information and documents as prescribed in Clause 1, Article 108 of the Intellectual Property Law and documents specified in Point b, Clause 2 of this Article.

#### **Article 49. Procedures related to confidential inventions**

1. Procedures for processing confidential patent applications and granting confidential patent protection titles, maintaining, amending, terminating, and invalidating confidential patent protection titles are carried out in accordance with corresponding regulations of Intellectual Property Law and guiding legal documents for patent applications, except for the cases specified in Clauses 2, 3, 4 and 5 of this Article.
2. A confidential invention registration application is subjected to substantive examination within a period of no more than 18 months from the date the application is accepted as to formality if the request for substantive examination is submitted before the date of formality acceptance or from the date a request for substantive examination is received if the request is filed after the date of formality acceptance.
3. The document stating the third party's opinion or opposition is considered a source of information for the process of a confidential patent application. In case it is not possible to determine whether the information or the disclosure of information in documents as prescribed in this Clause is consistent with regulations on protection of state secrets, state management agency of industrial property shall coordinate with the Ministry of Public Security to determine the appropriateness on the disclosure of information in documents prescribed in this Clause according to the regulations on protection of state secrets.
4. The appeal procedure prescribed in Article 119a of Intellectual Property Law does not apply to decisions and notices on confidential patent applications and other types of applications related to confidential inventions.
5. Confidential patent applications and confidential patent protection certificates are not published in the Industrial Property Official Gazette.

#### **Article 50. Processing of confidential patent registration applications and declassified confidential patent protection certificates**

1. Confidential invention registration applications and confidential patent protection certificates are declassified according to the provisions of Article 22 of the Law on Protection of State Secrets.
2. In case there are clear grounds to believe that the invention in the confidential patent application, the invention protected under the confidential patent protection title is not in accordance with the provisions of Clause 1, Article 2 of the Law on Protection of State Secrets, the state management agency of industrial property issues a request to the applicant to re-determine whether the invention is a state secret according to the provisions of Law on Protection of State Secrets and set a period of 03 months from the date of notification for the applicant to respond to this request.
3. For cases of declassification as prescribed in Clause 1 of this Article, agencies and organizations with authority to declassify according to the provisions of the law on protection of state secrets shall notify the state management agency of industrial property and applicants and patent owners on declassification.
4. An invention registration application that is declassified according to the provisions of Clause 1 of this Article or is determined by the applicant to not be a state secret according to the provisions of Clause 2 of this Article has the filing date as the filing date of the confidential patent application and continue to be processed according to the provisions of the Intellectual Property Law for patent applications.
5. An invention protection certificate that is declassified according to the provisions of Clause 1 of this Article or determined by the applicant to not be a state secret according to the provisions of Clause 2 of this Article has the date of issuance as the date of grant of the patent. Confidential patent protection and related procedures are carried out in accordance with the provisions of the Intellectual Property Law for patent protection titles.



6. In case of declassification, the confidential patent application and the declassified patent/utility solution will be published in the Industrial Property Official Gazette within 03 months from the date of declassification.

**Article 51. Registration of confidential inventions abroad**

The filing of confidential patent applications abroad is carried out in accordance with the provisions of Law on Protection of State Secrets.

**Article 52. Management of the use of confidential inventions**

The use of confidential inventions protected under the provisions of Article 123 of the Intellectual Property Law must be in accordance with the provisions of Law on Protection of state secrets.

**Chapter V  
TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

**Article 53. Compensation for the right to use a patent licensed under a decision on compulsory licensing**

1. Compensation for the right to use a patent licensed under a compulsory licensing decision specified in Point d, Clause 1, Article 146 of the Intellectual Property Law is determined according to the economic value of the licensed rights, based on consideration of the following factors:

- a) Price for licensed rights according to the contract;
- b) Investment costs to create inventions, including funding supported from the state budget (if any);
- c) Profits gained from using the patent;
- d) Remaining validity period of the patent protection title;
- d) Necessity of licensing the patent;
- e) Licensing scope and duration;
- g) Other factors directly determine the economic value of the licensed rights.

2. Compensation for the right to use a patent that is licensed under a compulsory licensing decision in case the person to whom the right to use the patent is licensed and the patent owner cannot reach an agreement shall not exceed 5% net selling price of the product manufactured according to the patent, provided that the principles specified in Clause 1 of this Article are met.

3. If deemed necessary, the competent agency to issue a decision on compulsory licensing of a patent may establish a council to determine compensation in accordance with the provisions of law.

**Article 54. Right to request a decision on patent compulsory licensing**

Organizations and individuals that have the ability, duty or need to use patents specified in Points a, b, c and dd or are hindered from competition specified in Point d, Clause 1, Article 145 of Intellectual Property Law have the right to request the competent person specified in Clause 1, Article 147 of the Intellectual Property Law to issue a decision on patent compulsory licensing according to the specific provisions of Articles 55 and 56 of this Decree.

**Article 55. Documents requesting a decision on compulsory licensing of a patent**

1. A dossier requesting a decision on compulsory licensing of a patent includes the following documents:

- a) A request compulsory licensing of a patent, made according to Form No. 04 in Appendix I of this Decree;
- b) Documents proving that the request for a decision on patent compulsory licensing has a valid basis according to the provisions of the law specifically stipulated in Clauses 2, 3, 4, 5, 6 and 7 of this Article;
- c) Authorization document (in case the request is submitted through an IP representative);
- d) Copy of fee payment invoice (in case of payment done via postal service or direct payment to the account of the competent agency to handle this procedure).

2. In case of requesting a decision on patent compulsory licensing based on the provisions of Point a, Clause 1, Article 145 of Intellectual Property Law, the request dossier must have supporting documents that at the time of application, there is an actual need to use the patent for public, non-commercial purposes, serving national defense, security or disease prevention, treatment, nutrition for the people or to meet other urgent needs of the society, however the patent owner has not used the patent and the failure to do so will affect the achievement of those purposes and needs.

3. In case of requesting a decision on patent compulsory licensing based on the provisions of Point b, Clause 1, Article 145 of Intellectual Property Law, the request dossier must contain documents proving the patent owner has not fulfilled their obligation to use the patent specified in Clause 1, Article 136 and Clause 5, Article 142 of Intellectual Property Law and the time of filing the request is after 4 years from the patent application filing date and after 3 years from the patent granting date.

4. In case of requesting a decision on patent compulsory licensing based on provisions of Point c, Clause 1, Article 145 of Intellectual Property Law, the request dossier must contain documents proving that the person with the need to use the patent failed to reach an agreement with the patent owner about the licensing contract despite attempts within a reasonable period of time to negotiate a price and satisfactory commercial conditions. The document must clearly state the need to use the invention, the time spent negotiating, the price and specific commercial conditions proposed by the person wishing to use the patent.

5. In case of requesting a decision on patent compulsory licensing based on the provisions of Point d, Clause 1, Article 145 of Intellectual Property Law, the request dossier must contain documents proving that the patent owner has committed an act considered to restrict competition and is prohibited according to the provisions of competition law.

6. In case of request to issue a decision on patent compulsory licensing in the field of semiconductor technology based on the provisions of Points a and d, Clause 1, Article 145 and Point b, Clause 1, Article 146 of Intellectual Property Law, the request dossier must contain documents proving that the use of the patent is strictly only for public, non-commercial purposes or documents proving that the patent owner has committed an act considered to restrict competition and is prohibited according to the provisions of competition law.

7. In case of requesting a decision on patent compulsory licensing based on the provisions of Point dd, Clause 1, Article 145 of the Intellectual Property Law, the request dossier must contain documents proving that the use of the invention to meet the demand for pharmaceuticals for disease prevention and treatment of other countries that are eligible for import under the provisions of Article 31bis of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

#### **Article 56. Procedures for handling dossiers requesting a decision on patent compulsory licensing**

1. Dossier requesting a decision on patent compulsory licensing shall be submitted according to the following regulations:

- a) Documents falling into the cases specified in Points b, c and d, Clause 1, Article 145 of Intellectual Property Law are submitted to the Ministry of Science and Technology;
- b) Documents falling into the cases specified in Points a and dd, Clause 1, Article 145 of the Intellectual Property Law are submitted to ministries and ministerial-level agencies managing the field of invention;
- c) The Ministry of Science and Technology, ministries and ministerial-level agencies shall designate an agency to receive and appraise dossiers in the cases specified in this Clause (hereinafter referred to as "dossier appraisal agency") .

Within 02 months from the date of receiving the dossier, the dossier appraisal agency reviews the dossier according to the following regulations:

- a) If the application is valid, within 20 days from the date of receiving the application, the dossier appraisal agency must issue a notice of request to license according to a compulsory licensing decision to the patent owner and require that person to give a written opinion within 01 month from the date of notification. The dossier appraisal agency must request relevant parties to renegotiate to overcome disagreements to sign a patent licensing contract, if deemed necessary. In case no agreement is reached between the parties and if it is deemed unreasonable for the patent owner to not sign a patent licensing contract, then report on the results and request the Minister of Science and Technology or Ministers or Heads of ministerial-level agencies to issue a decision on patent compulsory licensing.

If the request falls into the case specified in Point a, Clause 1, Article 145 of the Intellectual Property Law and the use of the invention is for public, non-commercial purposes, ministries and ministerial-level agencies have the right to issue decisions to enforce the request for patent compulsory licensing without requiring patent owner to comment and without requiring the parties to negotiate.

- b) In case the request for a decision on patent compulsory licensing does not have a valid basis according to the provisions of Article 145 of the Intellectual Property Law, the dossier appraisal agency reports the results and request the Minister of Science and Technology or Ministers or Heads of ministerial-level agencies to issue a notice of provisional refusal, clearly stating the reason for refusal and setting a time limit of 01 month from the date of notice for the person who requested to respond to the provisional refusal.

The time for the requester to correct errors in the request dossier or make objections is not included in the time limit for reviewing the dossier.

- c) For dossiers falling into the cases specified in Points a and dd, Clause 1, Article 145 of Intellectual Property Law, dossier appraisal agency of ministries and ministerial-level agencies send copies of dossiers to get opinions from The Ministry of Science and Technology (through the dossier appraisal agency of the Ministry of Science and Technology) before submitting to the Minister or Head of ministerial-level agencies for decision according to the provisions of Points a and b of this Clause. Within 20 days from the date of receipt of the dossier, the dossier appraisal agency of the Ministry of Science and Technology reviews the dossier and reports to the Minister of Science and Technology to send a written request for comments. Ministers and heads of ministerial-level agencies shall issue decisions on patent compulsory licensing or issue notices of refusal.

3. Within 20 days from the date of receiving the report on the results of the dossier review from the dossier appraisal agency of the Ministry of Science and Technology, the Minister of Science and Technology shall consider and issue a decision to arrest force the transfer of the right to use the invention, or send the applicant a notice of refusal to force the transfer of the right to use the invention, clearly stating the reason for refusal.

Within 20 days from the date of receiving the written request from the Minister of Science and Technology, the Minister or Head of the ministerial-level agency shall consider and issue a decision to force the licensing of the invention, or send the applicant a notice of refusal to force the transfer of patent use rights, clearly stating the reason for refusal.

In case of disagreement with the proposal of the Minister of Science and Technology, the Minister or Head of the ministerial-level agency shall notify in writing, clearly stating the reason.

4. The decision to force the transfer of rights to use an invention is sent by the Minister or Head of a ministerial-level agency to the person to whom the right to use the invention is transferred, the holder of the exclusive right to use the invention, and the dossier appraisal agency. of the Ministry of Science and Technology.

The dossier appraisal agency of the Ministry of Science and Technology must record the decision in the National Register of Industrial Property within 01 month and publish it in the Industrial Property Official Gazette within 02 months from from the date of decision.

#### **Article 57. Request to terminate the right to use a patent based on compulsory licensing**

1. Termination of the right to use patent based on compulsory licensing must be decided by the Minister, Head of the ministerial agency who issued the decision on patent compulsory licensing.

2. Request to terminate the right to use a patent based on compulsory licensing includes the following documents:

a) Written request to terminate the right to use the patent based on compulsory licensing;

b) Documents proving that the grounds leading to the compulsory licensing no longer exist and are unlikely to reappear, and the termination of use of the patent does not cause damage to the licensee;

c) Power of attorney (in case the request is submitted through a representative);

d) Copy of fee payment invoice (in case of payment done via postal service or direct payment to the account of the dossier appraisal agency of the Ministry of Science and Technology).

3. Procedures for receiving and processing requests for termination of rights to use patent based on compulsory licensing and issuing decisions on termination are carried out as for procedures for receiving and processing dossiers requesting the patent compulsory licensing as prescribed in Article 55 of this Decree.

#### **Article 58. Dossier for registration contracts for transferring industrial property rights**

1. Dossier for registration of contracts of assignment of industrial property rights includes 01 set of following documents:

a) Declaration for registration of contract of assignment of industrial property rights made according to Form No. 01 in Appendix IV of this Decree;

b) 01 contract (original or certified copy according to regulations); If the contract is made in a language other than Vietnamese, it must be accompanied by a translation of the contract into Vietnamese; If the contract has many pages, each page must have the parties' signatures or seals;

c) Original protection title in case the protection title is issued in paper form;

d) Written agreement of the co-owners on the assignment of industrial property rights, if the corresponding industrial property rights are jointly owned;

dd) Power of Attorney (in case the request is submitted through a representative);

e) Copy of fee payment invoice (in case of payment of fees done via postal service or direct payment to the account of the state management agency of industrial property);

g) For dossiers to register the contract of assignment of collective marks or certification marks, in addition to the above documents, the following documents are required:

g1) Regulations on using collective marks and regulations on using certification marks of the Licensee according to Article 105 of Intellectual Property Law;

g2) Documents proving the assignor's right to file applications for certification marks or collective marks according to Clauses 3 and 4, Article 87 of Intellectual Property Law.

In this case, the state management agency of industrial property re-examines the right to file applications and regulations for using the trademark. The applicant must pay an examination fee in addition to the fees for registration of contract of assignment of industrial property rights according to regulations.

2. Dossier to register an industrial property licensing contract must include the following documents:

a) Declaration for registration a industrial property licensing contract, made according to Form No. 02 in Appendix IV of this Decree;

b) 02 copies of the contract (original or copy accompanied by the original for comparison, unless the copy has been authenticated according to regulations); If the contract is made in a language other than Vietnamese, it must be accompanied by a translation of the contract into Vietnamese; If the contract has many pages, each page must have the parties' signatures or seals;

c) Written agreement of the co-owners on the licensing of industrial property rights, if the corresponding industrial property rights are jointly owned;

d) Power of attorney (in case the request is submitted through a representative);

dd) Copy of fee payment invoice (in case of payment done via postal service or direct payment to the account of the state management agency of industrial property).

3. Each industrial property rights transferring contract registration dossier is accepted for only one transfer step. In case the industrial property rights is transferred in many steps, each transfer step must have a separate industrial property rights transferring contract application dossier.

### **Article 59. Procedures for processing dossiers for registration of contract of transferring industrial property rights**

1. In case the dossier for registration of contracts of transferring of industrial property rights does not contain the shortcomings mentioned in Clause 3 of this Article, the state management agency of industrial property shall carry out the following tasks:

a) Issue a Decision to record the assignment of industrial property rights (for assignment contracts) and Decision to issue a Certificate of industrial property licensing contract (for licensing contracts);

b) For assignment contracts: Record into the protection title the assignment. In case of assigning partially the list of goods and services bearing a protected trademark, issue a Trademark Registration Certificate to the Assignee and determine the limit of the list of goods and services in the original protection title;

c) For licensing contracts: Issue a Certificate of registration of Licensing contract to the applicant; stamp on 02 copies of the contract and give 01 copy to the applicant, keep 01 copy;

d) Record the transfer of industrial property rights in the National Register of Industrial Property;

dd) Publish the decision to record the assignment of industrial property rights and the decision to issue the Certificate of registration of licensing contract in the Industrial Property Official Gazette within 02 months from decision date.

2. In case the dossier for registration of contract of transferring industrial property rights contains shortcomings as prescribed in Clause 3 of this Article, the state management agency of industrial property shall carry out the following procedures:

a) Issue a notice of provisional refusal, clearly stating the shortcomings of the dossier, and set a period of 02 months from the date of signing the notice for the applicant to correct the shortcomings or give opinions on the provisional refusal;

b) Issue a decision to refuse contract registration if the applicant does not correct the shortcoming or the correction isn't satisfactory, has no objections about the provisional refusal or the objections is not valid within the specified time limit.

3. An industrial property transfer contract registration dossier is considered inadequate in one of the following cases:

a) The form is not satisfactory;

b) Missing one of the documents in the list of required documents;

c) Invalid power of attorney;

d) The copy of the contract is not properly certified;

dd) The name and address of the transferor in the contract do not match the corresponding information in the protection title or in the contract that is the basis for the transferring right, in the power of attorney, and in the form. The name and address of the transferee in the contract do not match the name and address stated in the power of attorney, in the form;

e) The contract does not have enough signatures (and seals, if any) of the transferrer and transferee;

g) The assignor is not the owner of the protection title;

h) The relevant industrial property subject matter is no longer within the validity period of protection or is in dispute;

i) The transfer contract lacks the required contents according to the corresponding provisions in Article 140 or Clause 1, Article 144 of the Intellectual Property Law;

k) The contract has content not in compliant with the provisions on the conditions of restricting the transfer of industrial property rights in Article 139 of Intellectual Property Law or has clauses that unreasonably restrict the rights of the transferee as according to Clause 2, Article 144 of Intellectual Property Law;

l) There are grounds to assert that the transfer of industrial property rights infringes the industrial property rights of a third party.

4. The time limit for handling applications for registration of industrial property rights transfer contracts is 02 months. The time spent by the applicant to correct shortcomings is not included in the application processing time.

5. After the registration dossier of an industrial property transfer contract is submitted to the state management agency of industrial property, if the parties have a dispute related to the contract, the state

management agency shall temporarily suspend the processing of the dossier until the parties resolve the dispute and submit documents proving that the dispute has been resolved, then the state management agency of industrial property continues to process the dossier according to regulations.

6. Before the state management agency of industrial property issues a decision to record or refuse to record the registration of an industrial property transfer contract, one of the parties wants to withdraw the contract registration, both parties must consent to withdraw the submitted application for registration of industrial property transfer contract, except in cases where the application is withdrawn due to the inability to overcome the shortcomings at the request of the state management agency of industrial property.

#### **Article 60. Conditions to restrict the transfer of trademark rights**

1. The transfer of rights to a trademark according to the provisions of Clause 4, Article 139 of Intellectual Property Law is considered to cause confusion about the characteristics and origin of goods and services bearing the trademark in the following cases:

a) The assigned trademark is identical or confusingly similar to another national or international trademark owned by the assignor;

b) Part of the goods and services bearing the assigned mark is similar to the remaining goods and services in the list of goods and services owned by the Assignor and the use of the mark on the Assignee's goods or services is likely to cause confusion about the commercial origin of the goods or services (in cases where the scope of assignment is only partial of the list of goods or services);

c) The assigned trademark contains elements which shall make consumers confused or misunderstand about the origin, quality, value, etc. of the goods and services within the scope of assignment.

2. Rights to collective marks or certification marks can only be assigned to organizations that meet the conditions for organizations that have the right to register such collective marks or certification marks.

#### **Article 61. Recording content amendments, extensions, and premature termination of contracts for transfer of industrial property rights**

1. Amendments to the content, extension, or premature termination of a contracts for transfer of industrial property rights must all be recorded at the state management agency of industrial property as prescribed in this Article.

2. Documents requesting recording content modifications, extensions, or termination before the contract validity period are made as follows:

a) Dossier requesting recording content amendment, extension, or premature termination of a contract to transfer industrial property rights must be made in writing and include the following documents:

a1) Form requesting the recordal of content amendment, extension, or premature termination of the contract to transfer industrial property rights according to Form No. 03 in Appendix IV of this Decree;

a2) Original Certificate of registration of contract for transfer of industrial property rights (in case of registering to amend the content or extend the validity of the contract);

a3) Documents proving the change of names and addresses of the parties to the contract;

a4) Agreements and documents recording specific terms that need to be amended or supplemented in the contract, including extension or premature termination of the contract;

a5) Power of attorney (in case the request is submitted through a representative);

a6) Copy of fee payment invoice (in case of payment made via postal service or direct payment to the account of the state management agency on industrial property rights).

b) Documents requesting contract extension must be submitted within 01 month from the end date of the contract term stated in the Certificate of contract registration for transfer of industrial property rights.

3. Within 01 month from the date of receipt of the dossier requesting recording of content amendment, extension, or premature termination of contract, the state management agency of industrial property is responsible for reviewing documents according to the following regulations:

a) In case the dossier is acceptable, the state management agency of industrial property shall issue a decision to record content amendments, extensions, or premature termination of the contract of transfer of industrial property rights; record the contents of amendments and extensions of the contract in the Certificate; record the contents of amendments, extensions, and premature termination of the contract in the National Register of Industrial Property; Announcing decisions of recordal for content amendments, extensions, and premature termination of contracts in the Industrial Property Official Gazette within 02 months from the Decision issuance date;

b) In case the dossier has shortcomings, the state management agency of industrial property rights shall issue a notice of provisional refusal to record content amendments, extensions, or premature termination of the transfer contract of industrial property rights, clearly stating the shortcomings of the dossier and setting a period of 02 months from the date of the notice of provisional refusal for the applicant to correct the shortcomings or object the provisional refusal.

If the applicant does not correct the shortcoming or corrections are not satisfactory, has no objections or objections are not valid within the prescribed time limit, the state management agency of industrial property shall issue a Decision of Refusal to record content amendments, extensions, or premature termination of the transfer contract for industrial property rights.

## **Chapter VI INDUSTRIAL PROPERTY REPRESENTATIVE**

### **Article 62. Industrial property law training program**

1. The industrial property law training program must ensure that it provides learners with the necessary knowledge and skills to apply industrial property law to solve specific issues related to industrial property rights with a minimum duration of 20 study units or 18 credits (of which, at least 40% of the duration is practical training, professional internship or graduation internship).

2. The Ministry of Science and Technology develops a framework training program on industrial property law according to the criteria specified in Clause 1 of this Article.

3. The industrial property law training course specified in Point d, Clause 2 and Clause 2a, Article 155 of the Intellectual Property Law is taught according to the framework program specified in Clause 2 of this Article shall be recognized by the Ministry of Science and Technology

4. An individual is considered to have graduated from an industrial property law training course specified in Point d, Clause 2 and Clause 2a, Article 155 of the Intellectual Property Law if he/she graduates from an industrial property training course that meets the requirements specified in Clause 2 of this Article and is recognized by the Ministry of Science and Technology according to Clause 3 of this Article.

### **Article 63. Examination of industrial property representation profession**

1. Examination of industrial property representation expertise is conducted to assess the ability to apply industrial property law to solve specific issues related to establishing and protecting industrial property rights.



2. The state management agency of industrial property organizes professional examinations for industrial property representation every 02 years. The plan to organize the industrial property representation professional examination must be published on the electronic information portal of the state management agency of industrial property.

3. The examination results are notified to the participants by the state management agency of industrial property. Exam participants have the right to request the state management agency of industrial property to review the exam results.

4. The individual's examination results that meet the provisions of Point e, Clause 2, Article 155 of the Intellectual Property Law are valid for a period of 05 years (from the date of notification of examination results) for the request to the state management agency of industrial property to issue the Practicing Certificate for industrial property representation services.

5. The Industrial Property Representation Professional Examination Council established by the state management agency of industrial property, with the task of organizing the industrial property representative professional examination according to the Inspection Regulations of the industrial property representation profession issued by that agency.

6. Individuals who fully meet the conditions specified in Points a to dd, Clause 2, Article 155 of the Intellectual Property Law may register to take the industrial property representation examination according to the provisions of Clause 7 of this Article.

7. The examination registration dossier submitted to the state management agency of industrial property includes 01 set of the following documents:

a) Examination registration request form, made according to Form No. 01 in Appendix V of this Decree;

b) Copy of bachelor's degree or equivalent diploma specified in Point c, Clause 2, Article 155 of the Intellectual Property Law (bring the original for comparison, unless the copy has been certified);

c) Copy of Certificate of graduation from industrial property law training course recognized by the Ministry of Science and Technology as prescribed in Article 62 of this Decree (bring the original for comparison, except the copy has been certified); or a copy of the decision of employment or labor contract and other documents (certified by the agency or organization where the applicant works) proving at least 05 years of experience directly evaluating applications of industrial property at a national or international agency on industrial property or legal work on industrial property specified in Point d, Clause 2, Article 155 of the Intellectual Property Law, including inspection and examination work, prosecution, adjudication, legislation, legal consulting, state management of industrial property; scientific research (with the title of researcher) and teaching about industrial property (bring the original for comparison, unless the copy has been certified);

d) 02 photos 3 x 4 (cm);

dd) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

8. Examination registration request dossiers are processed by the state management agency of industrial property within 20 days from the date of receipt in the following order:

a) In case the application is valid, the state management agency of industrial property shall notify the applicant of his/her eligibility to attend the examination, and at the same time inform him of the expected examination time, location, and schedules;

b) In case the request dossier is invalid, the state management agency of industrial property shall notify the applicant of shortcomings and set a deadline of 01 month from the date of notification for the applicant to make corrections;

c) In case the applicant does not correct the errors or the correction is not sufficient, the state management agency of industrial property shall issue a decision to refuse the application for registration for examination, clearly states the reason for refusal.

#### **Article 64. Grant, re-grant, and revocation of industrial property representation service practice certificates**

1. The granting of Industrial Property Representative Service Practicing Certificate is carried out as follows:

a) Industrial Property Representative Service Practicing Certificate is issued by the state management agency of industrial property to individuals who meet the conditions specified in Clauses 2 and 2a, Article 155 of the Intellectual Property Law if request was filed and fees were paid as prescribed by law;

b) Dossier requesting issuance of Industrial Property Representative Service Practicing Certificate includes 01 set of documents as follows:

b1) Request form for issuance of Industrial Property Representative Service Practicing Certificate, made according to Form No. 02 in Appendix V of this Decree;

b2) Copy of certificate of graduation from industrial property law training course and copy of lawyer card in case of applying for a practicing certificate as prescribed in Clause 2a, Article 155 of the Intellectual Property Law (bring the original for comparison, unless the copy has been certified);

b3) 02 photos 3 x 4 (cm);

b4) Copy of ID card (bring the original for comparison, unless the copy has been certified), except in the case where the request form for issuance of Industrial Property Representative Service Practicing Certificate already exists information about National ID Number;

b5) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) The application for an Industrial Property Representative Service Practicing Certificate shall be processed by the state management agency of industrial property within 01 month from the date of receipt of the application in the following order:

c1) In case the dossier is valid, the state management agency of industrial property shall issue an Industrial Property Representative Service Practicing Certificate, clearly stating full name, date of birth, and permanent residence, ID card number/citizen identification card, Certificate number and field of practice of the certificate holder; record the issuance of the Industrial Property Representative Service Practicing Certificate in the National Register of Industrial Property Representatives and publish it in the Industrial Property Official Gazette and the Electronic Information Portal of that agency in a period of 02 months from the date of decision;

c2) In case the dossier is invalid, the state management agency of industrial property shall notify the applicant about the shortcomings and set a time limit of 01 month from the date of notification for the applicant to make corrections;

c3) In case the applicant does not correct the shortcomings or the correction is not sufficient, the state management agency of industrial property shall issue a decision to refuse to issue the Industrial Property Representative Service Practicing Certificate, clearly stating the reason for refusal;

d) Industrial Property Representative Service Practicing Certificate is made according to Form No. 03 in Appendix V of this Decree.

2. Re-grant of the practicing certificate for industrial property representation services is carried out as follows:

a) In the following cases, the state management agency of industrial property will re-grant the industrial property representation service practice certificate if the industrial property representative submits a request and pays fees according to regulations:

a1) The information in the Industrial Property Representative Service Practicing Certificate specified in Point c1, Clause 1 of this Article has changed;

a2) The Industrial Property Representative Service Practicing Certificate is lost, defective or damaged (torn, dirty, faded, etc.) to the point of being unusable;

a3) The applicant has restored the eligibility to be granted an Industrial Property Representative Service Practicing Certificate in case the Practicing Certificate was revoked due to no longer meeting the conditions prescribed in Clauses 2 and 2a, Article 155 of Intellectual Property Law.

b) Dossier requesting re-grant of Industrial Property Representative Service Practicing Certificate submitted to the state management agency of industrial property includes 01 set of documents as follows:

b1) Request form for re-grant of Industrial Property Representative Service Practicing Certificate according to Form No. 04 in Appendix V of this Decree;

b2) 02 photos 3 x 4 (cm);

b3) Copy of ID card (bring the original for comparison, unless the copy has been certified), except in the case of a request form requesting re-grant of the Industrial Property Representative Service Practicing Certificate already had information about the National ID Number, for the cases specified in Point a1 of this Clause;

b4) Documents proving that the conditions for being granted an industrial property representation service practice certificate have been restored for the cases specified in Point a3 of this Clause;

b5) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) The dossier requesting re-grant of the Industrial Property Representative Service Practicing Certificate is processed by the state management agency of industrial property within 20 days from the date of receipt of the dossier in as the procedures for granting Industrial Property Representative Service Practicing Certificate specified in Point c, Clause 1 of this Article.

d) In case the Industrial Property Representative Service Practicing Certificate is defective due to the state management agency of industrial property, the agency is responsible for the re-grant of the Industrial Property Representative Service Practicing Certificate within 05 working days from the date of receiving the request from the Certificate holder, no fee will be charged for the re-grant of the Certificate.

3. The revocation of the Industrial Property Representative Service Practicing Certificate is carried out as follows:

a) The Industrial Property Representative Service Practicing Certificate by the state management agency of industrial property in the following cases:

a1) The individual granted the Industrial Property Representative Service Practicing Certificate no longer meets the conditions specified in Clauses 2 and 2a, Article 155 of Intellectual Property Law;

a2) The individual granted an Industrial Property Representative Service Practicing Certificate has his or her practice certificate revoked according to a decision of a competent state agency according to the provisions of Clause 4, Article 156 of Intellectual Property Law;

b) The state management agency of industrial property shall proactively or at the request of an organization or individual revoke the Industrial Property Representative Service Practicing Certificate if there are grounds to confirm that the certificate holder belongs one of the cases specified in Point a of this Clause;

c) Organizations and individuals requesting revocation of Industrial Property Representative Service Practicing Certificate must submit 01 set of documents as follows:

c1) Application for revocation of Industrial Property Representative Service Practicing Certificate;

c2) Documents proving grounds for revocation of Industrial Property Representative Service Practicing Certificate.

d) The procedure for revocation of the Industrial Property Representative Service Practicing Certificate is carried out as follows:

d1) In case an organization or individual requests to revoke the Industrial Property Representative Service Practicing Certificate according to the provisions of Point c of this Clause, within 01 month from the date of receipt of the request, the state management agency of industrial property shall notify in writing of this request to the person issued with the Practicing Certificate and set a time limit of 01 month from the date of notification for that person to give his/her opinion. Based on the consideration of the opinions of the parties, the state management agency of industrial property shall issue a decision to revoke the Practicing Certificate or refuse to revoke the Practicing Certificate and send it to the parties;

d2) In case there are grounds to confirm that the person granted the Certificate of industrial property representation services no longer meets the conditions specified in Clauses 2 and 2a, Article 155 of the Intellectual Property Law, the state management agency of industrial property shall notify in writing the intention to revoke the Industrial Property Representative Service Practicing Certificate to the person who is granted the Industrial Property Representative Service Practicing Certificate and set a time limit of 01 month from the date of notification for that person to give his/her opinion. Based on the consideration of the opinions of the person granted the Industrial Property Representative Service Practicing Certificate, the state management agency of industrial property shall issue a decision to revoke the Industrial Property Representative Service Practicing Certificate or a Notice not to revoke the Industrial Property Representative Service Practicing Certificate;

d3) In case there is a decision to revoke the Industrial Property Representative Service Practicing Certificate from a competent state agency, within 01 month from the date of receiving the above decision, the state management agency of industrial property shall issue a decision to revoke the Industrial Property Representative Service Practicing Certificate;

d4) The decision to revoke the Industrial Property Representative Service Practicing Certificate is recorded by the state management agency of industrial property in the National Register of Industrial Property Representation and published on Industrial Property Official Gazette within 02 months from the date of decision.

## **Article 65. Recording and deletion of names of industrial property representatives**

1. Recording of organizations qualified to provide industrial property representation services is carried out as follows:

a) Organizations which meet all the conditions prescribed in Article 154 of Intellectual Property Law are recognized by the state management agency of industrial property as an organization providing industrial property representation services in National Register of Industrial Property Representatives and published in the Industrial Property Official Gazette if they submit a request and pay fees according to the provisions of law.

Branches and other dependent units of organizations that meet the conditions prescribed in Article 154 of the Intellectual Property Law are only allowed to do business in industrial property representation services in the name of their organization.

b) Documents requesting recognition of industrial property representation service organizations in the National Register of Industrial Property Representatives submitted to the state management agency on industrial property rights are fulfilled by the organization. Conditions specified in Article 154 of the Law on Intellectual Property in the name, including 01 set of documents as follows:

b1) Request form for recordal of an industrial property representation service organization according to Form No. 05 in Appendix V of this Decree, with complete information about the organization and information about the industrial property representative authorized by the organization;

b2) Copy of the Decision of employment or labor contract of the organization for the person holding the Industrial Property Representative Service Practicing Certificate (bring the original for comparison, unless the copy has been certified);

b3) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) Within 20 days from the date of receipt of the dossier requesting recordal as an industrial property representation service organization, the state management agency of industrial property shall review the dossier in the same procedures as for granting Industrial Property Representative Service Practicing Certificate specified in Point c, Clause 1, Article 64 of this Decree.

2. Recording industrial property representatives is carried out as follows:

a) Individuals who are qualified to practice industrial property representation services can request the state management agency of industrial property to be recorded as an industrial property representative in the National Register of Industrial Property Representative and published in the Industrial Property Official Gazette according to the provisions of Clause 1, Article 156 of the Intellectual Property Law, the provisions of this Clause and must pay fees and charges according to regulations.

b) Documents requesting recordal of industrial property representatives in the National Register of Industrial Property Representatives submitted to the state management agency of industrial property by individuals who meet the conditions stipulated in Article 155 of the Intellectual Property Law, including 01 set of documents as follows:

b1) Request form for recordal of industrial property representative according to Form No. 06 in Appendix V of this Decree, which contains information about the industrial property representative organization and industrial property representative authorized by the organization;

b2) Copy of the Decision of employment or labor contract of the industrial property representation service organization for the individual (bring the original for comparison, unless the copy has been certified);

b3) Copy of fee payment voucher (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) Within 20 days from the date of receipt of the dossier requesting recordal of an industrial property representative, the state management agency of industrial property shall review the dossier with the same procedures for granting Industrial Property Representative Service Practicing Certificate in Point c, Clause 1, Article 64 of this Decree.

3. Recording changes in information of industrial property representation service organizations is carried out as follows:

a) Industrial property representation service organizations may request the state management agency in charge of industrial property rights to record changes related to information recorded in the National Register of Industrial Property Representatives (including full name, transaction name, abbreviated name, address of the organization, industrial property representative service business field, full name and Certificate number of the industrial property representative practicing in an organization) according to the provisions of this point and must pay fees and charges according to regulations.

b) A dossier requesting recording changes in information submitted by an industrial property representation service organization to the state management agency of industrial property includes the following documents:

b1) Request form requesting recordal of changes in information of the industrial property representation service organization according to Form No. 07 in Appendix V of this Decree;

b2) Copy of business registration certificate or amended business registration certificate of the industrial property representation service organization in case of change of name and address (bring the original for verification, except in the case of a certified copy), except in cases where the Enterprise Code has been declared in the Request form for recordal of changes in industrial property representation service organizations;

b3) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) Within 20 days from the date of receipt of the dossier requesting recording of information changes from the industrial property representation service organization, the state management agency of industrial property shall review the dossier with the same procedures as granting Industrial Property Representative Service Practicing Certificate specified in Point c, Clause 1, Article 64 of this Decree.

4. Deletion of the name of an industrial property representation service organization is carried out as follows:

a) Industrial property representation service organizations must carry out procedures to remove their names from the National Register of Industrial Property Representatives at the state management agency of industrial property in the following cases:

a1) The industrial property representation service organization abandons or terminates the industrial property representation service business;

a2) The industrial property representation service organization no longer fully meets the conditions specified in Article 154 of Intellectual Property Law;

b) A dossier requesting deletion of the name of an industrial property representation service organization submitted to the state management agency of industrial property includes the following documents:

b1) Request form for deletion of name of industrial property representation service organization according to Form No. 08 in Appendix V of this Decree;

b2) Documents proving that the organization is no longer qualified to provide industrial property representation services;

b3) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property).

c) Within 20 days from the date of receipt of the dossier requesting deletion of the name of the industrial property representation service organization, the state management agency on industrial property rights shall review the dossier with the same procedure for Industrial Property Representative Service Practicing Certificate are specified in Point c, Clause 1, Article 64 of this Decree.

5. Deleting the name of an industrial property representative is done as follows:

a) Industrial property representatives must carry out procedures to remove their names from the National Register of Industrial Property Representatives at the state management agency on industrial property rights when they no longer meet the conditions for practice according to the provisions of Point b, Clause 1, Article 155 of Intellectual Property Law.

b) A dossier requesting deletion of the name of an industrial property representative submitted to the state management agency on industrial property rights includes the following documents:

b1) Request form for deletion of name of industrial property representative according to Form No. 09 in Appendix V of this Decree;

b2) Documents proving that the person granted the Industrial Property Representative Service Practicing Certificate does not meet the conditions to practice industrial property representation services as prescribed in Point b, Clause 1, Article 155 of Intellectual Property Law (decision to terminate labor contract or other documents);

b3) Copy of fee payment invoice (in case of payment of fees made via postal service or direct payment to the account of the state management agency of industrial property);

c) Within 20 days from the date of receipt of the dossier requesting deletion of the name of the industrial property representative, the state management agency of industrial property shall review the dossier in the same procedures as for Industrial Property Representative Service Practicing Certificate specified in Point c, Clause 1, Article 64 of this Decree.

## **Chapter VII**

### **MEASURES TO PROMOTE INDUSTRIAL PROPERTY ACTIVITIES**

#### **Article 66. Training and fostering human resources for industrial property activities**

1. The Ministry of Science and Technology regulates in detail the contents and programs of training and fostering on industrial property.

2. The Ministry of Science and Technology shall preside over and coordinate with relevant ministries and branches to organize training on industrial property for those working in state management, appraisal, inspection, and handling of violations and infringement on industrial property.

#### **Article 67. Guarantee of industrial property information**

1. The industrial property information system includes a collection of information related to all protected industrial property objects in Vietnam, selected information by purpose or topic about industrial property subject matters about foreign industrial property are classified and arranged appropriately and conveniently for searching (looking up), distributing and using.

2. The Ministry of Science and Technology is responsible for organizing the construction and management of industrial property information databases, developing classification and search tools, and providing instructions on how to search and use domestic and international industrial property information; organize the provision of complete, timely and accurate information, ensuring access to information databases for those who need to use information to serve activities of establishing and protecting industrial property rights, research, development and commerce; manage and organize the sharing, connection, exploitation, international cooperation and other activities related to the national database on industrial property.

#### **Article 68. Expanding the scope of use of State inventions, industrial designs, and layout designs**

1. For inventions, industrial designs, and layout designs owned by the State and in cases where the protection title holder does not exploit such subject matters to meet the needs of society, other organizations of the State has the right to request the protection title holder to transfer the right to use such patent, industrial design, or layout design under the following conditions:

a) The right to use the transferred patent, industrial design, or layout design is non-exclusive and cannot be transferred to another person;

b) The scope of use of patents, industrial designs, and layout designs of the transferee does not affect the use of patents, industrial designs, and layout designs to the fullest extent of the protection title holder's ability;

c) In the case a patent, industrial design, or layout design is used for non-commercial purposes, the licensing fees shall be 50% of the rate that the recipient who is not a state organization must pay to receive the right to use that invention, industrial design, or layout design with other equivalent conditions.

2. The transfer of the right to use the State's inventions, industrial designs, and layout designs to state organizations specified in Clause 1 of this Article does not affect the rights of the protection title holder to transfer the right to organizations other than the State.

#### **Article 69. Encourage social organizations and socio-professional organizations to engage in industrial property activities**

Social organizations and socio-professional organizations operating in the field of industrial property are created with conditions to perform the function of consulting, providing social criticism on industrial property and promoting service activities. Non-public social services aim to fully promote the role of supporting the activities of state agencies and supporting industrial property rightsholders.

#### **Article 70. Other measures to encourage creative activities**

The State encourages and sponsors technological innovation activities through the following measures:

1. Sponsor technical innovation competitions.

2. Reward and disseminate experience, creative methods, and advanced examples of creative labor.

3. Support activities to establish and protect industrial property rights for creative achievements.

### **Part Four**

## **PROTECTION OF INDUSTRIAL PROPERTY RIGHTS AND RIGHTS TO PLANT VARIETIES**

### **Chapter I**

### **DETERMINE THE ACT, NATURE, AND EXTENT OF INFRINGEMENT, AND DETERMINE DAMAGES**



## **Section 1. BASIS FOR DETERMINING ACTS, NATURE, AND EXTENT OF INFRINGEMENT**

### **Article 71. Application of civil, administrative and criminal measures to protect industrial property rights and rights to plant varieties**

Depending on the nature and extent, acts of infringement may be handled by civil, administrative, or criminal measures according to the provisions of Part Five (Protection of Intellectual Property Rights) of the Intellectual Property Law and according to the following provisions:

1. Civil measures are applied to handle acts of infringement at the request of the holder of industrial property rights, rights to plant varieties or of organizations and individuals that suffer damage caused by acts of infringement, even if that act has been or is being handled by administrative or criminal measures. Procedures for requesting the application of civil measures, authority, order, and procedures for applying civil measures comply with the provisions of law on civil procedures.

2. Administrative measures are applied to handle acts of infringement in one of the cases specified in Article 211 of the Intellectual Property Law, at the request of the holder of industrial property rights or rights to plant varieties, of organizations and individuals that suffer damaged caused by acts of infringement, of organizations or individuals that detect acts of infringement, or when those acts are proactively discovered by competent authorities.

The sanctioning forms and levels, the competence and procedures for sanctioning acts of infringement and remedies shall comply with the provisions of the Law on Intellectual Property and the law on sanctioning of administrative violations in the field of industrial property rights and rights to plant varieties.

3. Penal measures shall be applied to handle infringing acts in cases where such acts contain all elements constituting a crime according to the provisions of the Penal Code.

The competence, order, and procedures for applying criminal measures comply with the law on criminal procedures.

### **Article 72. Determination of acts of infringement**

The examined act shall be considered as an act of infringement upon industrial property rights and plant variety rights specified in Articles 126, 127, 129 and 188 of the Intellectual Property Law, when all the following bases exist:

1. The examined subject matter falls within the scope of the objects being protected;

2. The examined subject matter contains an infringing element.

3. The person that takes the examined act is neither holder of the industrial property right holder or rights to plant varieties nor any person permitted by law or a competent authority as prescribed in Clause 2 and Clause 3 Article 125, Article 133, Clause 3 Article 133a, Article 134, Clause 2 Article 137, Articles 145, 190 and 195 of Intellectual Property Law;

4. The examined act takes place in Vietnam.

An examined act that takes place in the Internet but is performed on an electronic information page under the Vietnamese domain name or targeted at consumers or information users in Vietnam shall be regarded to take place in Vietnam.

### **Article 73. Bases for determination of protected subject matters**

1. The determination of a protected subject matter shall be based on the examination of documents and evidence proving the bases for emergence and establishment of the rights specified in Article 6 of the Law on Intellectual Property.
2. For industrial property rights that have been registered with competent agencies, the protected subject matters shall be determined based on the registration certificates, protection titles and other documents accompanying such certificates and protection titles.
3. For trade names, the protected subject matters shall be determined based on their using process and the sector and territory in which such trade names are used.
4. For business secrets, the protected subject matters shall be determined based on documents expressing the contents and nature of the business secrets and explanations and descriptions of relevant measures to keep them secret.
5. For well-known marks, the protected subject matters shall be determined based on documents and evidence expressing the reputation of the marks according to the criteria defined in Article 75 of the Law on Intellectual Property.
6. For geographical indications protected under international treaties, the protected subject matters shall be determined according to the international treaty or according to the National Register of Industrial Property.
7. Rights to plant varieties are determined according to the plant variety protection certificate issued by a competent state agency.

#### **Article 74. Infringing elements of ownership rights to inventions**

1. An infringing element of patent rights can be one of the following:
  - a) The product or product part (component) is identical or equivalent to the product or product part (component) within the scope of patent protection;
  - b) Process identical or equivalent to a process within the scope of patent protection;
  - c) The product or part (component) of the product is manufactured by a process identical or equivalent to a process within the scope of patent protection.
2. The basis for determining the infringing element of the rights to an invention is the scope of patent protection determined according to the Invention Patent, Utility Solution Patent or an extract from the National Register of Industrial property.

#### **Article 75. Infringing elements of layout designs of semiconductor integrated circuits**

1. An infringing element of a layout design of a semiconductor integrated circuit may take one of the following forms:
  - a) The layout design is created by illegally copying a protected layout design;
  - b) Semiconductor integrated circuits are illegally created according to protected layout designs;
  - c) Product or part (component) of a product in which a semiconductor integrated circuit defined at Point b of this Clause is incorporated.
2. The basis for determination of an infringing element of rights to layout designs is the scope of protection of rights to layout designs of semiconductor integrated circuit stated in the Certificate of

registration of semiconductor integrated circuit layout design or the excerpt National Register of Industrial Property.

#### **Article 76. Infringing elements of industrial designs**

1. An infringing element of an industrial design is a product or part to be assembled into a complex product whose external appearance is not significantly different from the protected industrial design.
2. The basis for determining the infringing element of industrial design rights is the scope of industrial design protection determined according to the industrial design patent, the protection decision of international industrial design or an extract of the National Register of Industrial Property.
3. Products and parts to be assembled into complex products with external appearance that is considered not significantly different from the protected industrial design in the following cases:
  - a) The examined products or parts to be assembled into complex products, even with an industrial design patent, have an external appearance that is a collection of design features forming an overall combination being a copy or in substance a copy (with virtually indistinguishable difference) of another person's protected industrial design ;
  - b) The examined products or parts to be assembled into complex products have an external appearance that is a collection of design features forming an overall combination being a copy or in substance a copy of the protected industrial design or at least one product within a set of products of another person.

#### **Article 77. Infringing elements of marks**

1. An infringing element of a mark is a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the protected mark.
2. The basis for determination of an infringing element of a mark is the scope of protection of the mark including the mark specimen and a list of goods and services in the mark registration certificate or the certificate of protection in Vietnam of internationally registered mark or an extract of National Register of Industrial Property or through evaluation of evidence proving well-known marks specified at Article 75 of this Law.
3. To determine whether a suspected sign is an infringing element of a mark, it is required to compare such sign to the mark and at the same time to compare goods or services bearing such sign to the protected products or services. An infringing element can only be confirmed if the following two conditions are fully met:
  - a) The suspected sign is identical or confusingly similar to the mark within the scope of protection; where a sign is regarded as identical to a protected mark if it has the same composition and method of presentation; a sign is regarded as confusingly similar to a protected mark if it has several parts identical or similar to those of the protected mark to such an extent that it is not easy to distinguish between them in terms of composition, the way of pronunciation, the way of phonetic transcription of signs, meaning, the method of presentation, colors as to visible signs, rhythm, melody as to sound marks, and use of such sign is likely to cause confusion to consumers as to goods or services bearing the mark;
  - b) Goods or services bearing the suspected sign are identical or similar in substance to, or in functions, utility with, and have the same distribution channel with the protected goods, services; or have a correlation with the protected goods or services in terms of substance or functions or method of implementation.
4. For well-known marks, a suspected sign shall be regarded as an infringing element if:

- a) The suspected sign meets the condition specified at Point a, Clause 3 of this Article;
- b) Goods or services bearing the suspected sign meet the condition specified at Point b, Clause 3 of this Article or goods or services are not identical, similar or related to the goods or services bearing the well-known mark but are capable of misleading customers as to the origin of services or goods or create wrong impressions about the relationship between the producer or trader of such goods or services and the owner of the well-known mark.

#### **Article 78. Infringing elements of geographical indications**

1. An infringing element of a geographical indication is expressed in the form of a sign affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising and other means of business, which is identical or confusingly similar to the protected geographical indication.
2. The basis for determination of an infringing element of a geographical indication is the scope of protection of the geographical indication stated in the certificate of registered geographical indication or the treaties' provisions on recognition and protection of the geographical indication or an extract of National Register of Industrial Property.
3. To determine whether a suspected sign is an infringing element of a geographical indication, it is required to compare such sign to the geographical indication and to compare products bearing such sign to products bearing the protected geographical indication on the following bases:
  - a) The suspected sign is identical or confusingly similar to the geographical indication within the scope of protection; where a sign is regarded as identical to a protected geographical indication if it has the same composition of words, including the way of pronunciation, the way of phonetic transcription of letters, meaning or image and symbol within the scope of protection of the geographical indication; a sign is regarded as confusingly similar to a protected geographical indication if it is confusingly similar to the protected geographical indication in terms of word composition, the way of pronunciation, the way of phonetic transcription of letters, meaning or image and symbol within the scope of protection of the geographical indication, therefore misleading consumers as to that products bearing such sign originate from geographical area bearing the protected geographical indication;
  - b) Products bearing the suspected sign are identical or similar to those bearing the protected geographical indication, where a product is regarded as identical or similar if it is identical or similar in terms of substance, functions, utility and distribution channel to another product;
  - c) For wine and spirits, apart from the provisions of Point a and Point b of this Clause, a sign that is identical to a protected geographical indication, including its expression in the form of translation or phonetic transcription or accompanied by parts of speech, types, forms, adaptations or similar words that are used for products not originated from the geographical area bearing the protected geographical indication, shall also be regarded as an infringing element of the rights to the geographical indication.

#### **Article 79. Infringing elements of trade names:**

1. An infringing element of a trade name is expressed in the form of a commercial indication affixed on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the protected trade name.
2. The basis for determination of an infringing element of a trade name is the scope of protection of the trade name that is determined based on evidence of the lawful use of the trade name provided by the owner of trade name, where specifying the business owner, business establishment, business activities, business fields and business areas and and the process of using the trade name.
3. To determine whether a suspected sign is an infringing element of a trade name, it is required to compare the sign to the protected trade name, to compare business owner, business establishment,

business activities relevant to the suspected sign, and to compare goods or services bearing such sign to the protected products or services on the following bases:

- a) The suspected sign is identical or confusingly similar to the protected trade name; where a sign is regarded as identical to a protected trade name if it has the same composition of words, including the way of pronunciation, the way of phonetic transcription of the trade name; a sign is regarded as similar to a protected trade name if it is similar in terms of composition, the way of pronunciation, the way of phonetic transcription of the trade name, thereby misleading consumers as to the business owner, business establishment or business activities bearing the protected trade name;
- b) Goods or services bearing the suspected sign shall be regarded as identical or similar to those bearing the protected trade name if they are identical or similar in terms of substance or functions, utility and have the same distribution channel; or have a correlation in terms of substance or functions or method of implementation.

#### **Article 80. Infringing elements of plant varieties:**

1. An infringing element of a plant variety shall be regarded as act of infringement if it is expressed as following:

- a) Propaganda materials, intact seedlings, harvested products or other materials which are capable of growing into complete seedlings of a protected plant variety;
- b) Denomination of a plant variety or confusingly similar characters presented on goods, their packages, means of services, transaction documents, signboards, means of advertising or other means of business that is identical or confusingly similar to the denomination of the protected plant variety.
- c) Machinery, equipment and facilities, warehouses for storage and preservation, transportation vehicles and other equipment for the purpose of processing and stocking seedlings, propaganda materials, harvested products for use as breeding materials of a plant variety.

2. The basis for determination of an infringing element of the rights to a plant variety is the scope of protection of the plant variety stated in the valid certificate of registered the plant variety.

#### **Article 81. Bases for determination of nature and extent of infringement industrial property rights, rights to plant varieties**

1. The nature of infringement provided in Clause 1, Article 199 of the Law on Intellectual Property is determined on the following bases:

- a) Circumstances and motive of infringement: unintentional infringement, intentional infringement, infringement due to control or dependency, first-time infringement, recidivism;
- b) Manners of commission of acts of infringement: isolated infringement, infringement in an organized manner, self-commission of acts of infringement, bribery, deception, compelling of other persons to commit acts of infringement.

2. The extent of infringement provided in Clause 1, Article 199 of the Law on Intellectual Property is determined on the following bases:

- a) Scope of territory, time, volume and scale of commission of acts of infringements;
- b) Influence, consequences of acts of infringement.

#### **Article 82. Principles for determination of damages to Industrial Property Rights and Plant Variety Rights**

1. Damages caused by infringement of industrial property rights and plant variety rights provided in Article 204 of the Intellectual Property Law are the actual losses including both physical and spiritual, directly caused to the intellectual property right holder by acts of intellectual property right infringement.

2. Actual losses shall be regarded as having been occurred when all the following bases exist:

a) The physical or spiritual benefit is real and belongs to the aggrieved person;

b) The aggrieved person could achieve the benefit specified in Point a of this Clause;

c) There is a decrease in or loss of the benefit of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such benefit if such act of intellectual property right infringement would not happen and it constitutes the direct cause of such decrease in or loss of the benefit.

3. The level of damage is determined in accordance with the infringing elements of the intellectual property right subject matters, rights to plant varieties. The determination of the level of damage is based on the evidence of the damage submitted by the parties, including the assessment results and damage declarations that clearly state the bases for determination and calculation of the level of damage.

#### **Article 83. Losses in property**

1. Property losses are determined in accordance with the level of decrease in or loss of the in-cash value of the subject matters of industrial property rights and plant variety rights protected.

2. The in-cash value of the subject matters of industrial property rights and plant variety rights as stipulated in paragraph 1 of this Article is determined based on one or more of the following criteria:

a) The price of transferring ownership rights or the price of transferring of the use right of the subject matters of industrial property rights or plant variety rights;

b) The value contributed to the business by the ownership of industrial property rights or plant variety rights;

c) The value of industrial property rights or plant variety rights within the total assets of an enterprise;

d) The investment value for the creation and development of the subject matters of industrial property rights or plant variety rights, including marketing, research, advertising, labor, taxes, and other expenses.

#### **Article 84. Losses in spirit**

Losses in honor, dignity, reputation, and other spiritual losses suffered by inventors, creators of industrial design, layout design and plant variety as stipulated in the Intellectual Property Law, resulting from the violation of their personal rights, leading to harm to their honor, dignity, a decrease or loss of prestige, reputation, and trust due to misunderstandings.

#### **Article 85. Decrease in income and profits**

1. Income and profits as stipulated in Point a of Clause 1 of Article 204 of the Intellectual Property Law include:

a) Income and profits gained from directly using and exploiting of the subject matters of industrial property rights, or plant variety rights;

- b) Income and profits gained from the leasing of the subject matters of industrial property rights or plant variety rights;
- c) Income and profits gained from the transfer of the right to use the subject matters of industrial property rights or plant variety rights.

2. The level of decrease in income and profits is determined based on one or more of the following criteria:

- a) A direct comparison of actual income and profits before and after the acts of infringement are committed, corresponding to each type of income specified in paragraph 1 of this Article;
- b) A comparison of the actual production output, quantity of products, goods, or services consumed or supplied before and after the acts of infringement are committed;
- c) A comparison of the actual market selling price of products, goods, or services before and after the acts of infringement are committed.

### **Article 86. Loss of Business Opportunities**

1. Business opportunities specified in point a of Clause 1 of Article 204 of the Intellectual Property Law include:

- a) The actual ability to use and exploit the subject matters of industrial property rights or plant variety rights directly in business;
- b) The actual ability to lease the subject matters of industrial property rights or plant variety rights to others;
- c) The actual ability to transfer the use right of the subject matters of industrial property rights or plant variety rights, as well as transfer the subject matters of industrial property rights or plant variety rights to others;
- d) Loss of other business opportunities directly caused by acts of infringement.

A loss in business opportunities is the damage in terms of the in-cash value of the income that the aggrieved person could have achieved in any of the cases referred to in Clause 1 of this Article but fails to do so due to acts of infringement.

### **Article 87. Reasonable expenses for prevention and remedy of damage**

Reasonable expenses for prevention and remedy of damage as stipulated in point (a), Clause 1, Article 204 of the Intellectual Property Law include expenses for temporary custody, maintenance, storage of infringing goods, costs for implementing provisional urgent measures, reasonable expenses for hiring the lawyers, assessment services, prevention, and remedy of infringement acts, and expenses for notification and correction in the mass media relating to acts of infringement.

## **Chapter II REQUEST FOR HANDLING OF INFRINGEMENTS AND SETTLEMENT THEREOF**

### **Article 88. Exercise of the right to self-protection**

1. Organizations and individuals shall exercise the right to self-protection in accordance with the provisions of Article 198 of the Intellectual Property Law and the detailed regulations stipulated in this Article.

2. Technological measures provided for in point a, Clause 1 of Article 198 of the Intellectual Property Law include:

a) Providing information indicating the emerging grounds, protection titles, owners, scope, term of protection, and other relevant information concerning industrial property rights, rights to plant varieties on products, and service means (hereinafter collectively referred to as “products” in this Article) in order to inform that the products are subject matters under protection of industrial property rights and rights to plant varieties, and warn that they should not be infringed upon;

b) Using means or technical measures to mark, identify, distinguish, and protect the protected products.

3. The request to terminate the acts of infringement as prescribed in point b, clause 1 of Article 198 of the Intellectual Property Law shall be made in writing by the holder of industrial property rights, rights to plant varieties to the infringer. The written notification must contain information indicating the emerging grounds, protection titles, scope, term of protection, and must specify a reasonable deadline for the infringer to cease the acts of infringement.

4. Requests for competent state authorities to handle Acts of infringement specified in point (c), Clause 1, Article 198 of the Intellectual Property Law must be made in compliance with the provisions of Articles 89, 90, 91, 92, 93, and 94 of this Decree.

#### **Article 89. Petition for handling infringement**

1. The Petition for handling infringement must contain the following essential contents:

a) Date, month, year of the petition;

b) Name, address of the requester for handling infringement; the name of the representative, if the request is made through a representative;

c) Name of the receiving authority for handling the request;

d) Name, address of the infringing party; name, address of the suspected infringer in case of requesting temporary suspension of customs procedures for export or import goods suspected of infringement;

dd) Name, address of relevant rights holders or interested parties (if any);

e) Name, address of witnesses (if any);

g) Brief information about the infringed industrial property rights, rights to plant varieties: type of the right, bases for emergence of the right and brief information of the infringed subject matters;

h) Brief information about the acts of infringement: date, month, year, and location of the infringement, brief description of the infringing product, acts of infringement, and other information (if any);

i) Measures content requested to be applied to handle infringement;

k) List of accompanying documents and evidence;

l) Signature of the requester and seal (if any).

2. The Petition for handling infringement must be accompanied by documents and evidence to proving the request. The supporting documents and evidence must comply with the provisions of Article 90 of this Decree.

#### **Article 90. Documentation and Evidence Attached to the Petition for handling infringement**



1. A requester for handling of infringement must submit the petition together with the following documents and evidence to prove the request:

- a) Evidence proving that the requester is the right holder, if the requester is the owner or has been transferred, inherited, or succeeded to the industrial property rights or rights to plant varieties;
- b) Evidence proving the actual occurrence of the acts of infringement; evidence indicating suspected export or import goods that infringe industrial property rights, rights to plant varieties, in cases of requests for temporary suspension of customs procedures;
- c) Other documents and evidence to support their request.

2. In cases where the request for handling of infringement is conducted through an authorized representative, a notarized or authenticated power of attorney must be included. If the request is made through a legal representative, documents verifying the legal capacity of the representative must be provided.

### **Article 91. Evidence to prove the right holder status**

1. For inventions, industrial designs, lay-out designs, marks, plant varieties, evidence to prove the right holder status may be one of the following two documents:

- a) A copy of the certificates of the patent, utility solution or industrial design, the layout design of semiconductor integrated circuits, mark, the plant variety protection title, enclosed with the original for comparison, unless the copy has been duly authenticated;
- b) An excerpt from the National Register of Industrial Property; an excerpt from the National Register of rights to protected plant varieties, issued by the competent agencies that have registered those subject matters.

2. For an internationally registered mark designating Vietnam under Madrid Agreement and Madrid protocol, the evidence to prove the right holder status shall be the Confirmation Notice of validity of international registration in Vietnam issued by the state management agency of industrial property, or the copy has been duly authenticated or an excerpt from the National Register of Industrial Property (International Trademark Registration Section).

3. For an internationally registered industrial designs designating Vietnam under the Hague Agreement, the evidence to prove the right holder status shall be a copy of the Decision accepting the protection of the international registered industrial design by the state management agency of industrial property, enclosed with the original for comparison or the copy has been duly authenticated, or an excerpt from the National Register of industrial property (International Industrial Designs Registration Section).

4. For geographical indications, evidence to prove the right holder status may be one of the following documents:

- a) The original of geographical indication registration certificate or an excerpt from the National Register of Industrial Property;
- b) The list of organizations and individuals using geographical indications as stipulated in point c, clause 1 of Article 38 of this Decree; or other documents proving the right holder status as prescribed by the laws of the country of origin in cases where foreign geographical indications are protected in Vietnam.

5. For other industrial property rights subject matters, evidence to prove the right holder status shall be any documents, exhibits or information used as the basis for establishment of the relevant right as provided at Point a, Point b and Point c, Clause 3 of Article 6 of the Law on Intellectual Property and specified as follows:

a) For business secrets: a description of the contents, form of storage, method of protection and method of acquisition of the secret;

b) For trade names: documents proving the lawful using of the trade name, business fields and business areas using trade names and process of using of the trade name;

c) For well-known marks: documents evidencing the criteria of a well-known mark provided in Article 75 of the Law on Intellectual Property and explanations on the process of using a mark to make it well-known;

d) For geographical indications protected under international treaties: The documents and information within international treaties related to the recognition and protection of geographical indications or an excerpt from the National Register of industrial property;

dd) For plant varieties: Valid plant variety protection certificate, Decision to grant or re-issue plant variety protection certificate; or an extract from the National Register of protected plant varieties and evidence collected from sources as stipulated in Article 94 of the Civil Procedure Code.

6. If the requester for handling of infringement is a transferee of the ownership of the industrial property, plant varieties right subject matter, a transferee of the right to use the industrial property, plant varieties right subject matter, a heir or successor of the industrial property, plant varieties right subject matter, in addition to those documents referred to in Clauses 1, 2 and 3 of this Article, the requester shall also produce the original or a valid copy of the contract for transfer of the ownership of the industrial property, plant varieties right subject matter or for the license agreement of the industrial property, plant varieties right subject matter or a document of certification of the inheritance or succession of the industrial property, plant varieties right subject matter. In case of the transfer has been recorded in the registration certificates or the certificate of recordal of Assignment Agreement of the industrial property, plant varieties right subject matter or for the license agreement of the industrial property, plant varieties right subject matter, these documents shall be also regarded as evidence to prove the right holder status.

#### **Article 92. Evidence to prove infringement**

1. The following documents and exhibits shall be regarded as evidence to prove an infringement:

a) The original or a valid copy of the descriptive documents or specimen or related exhibit expressing the protected subject matter;

b) The specimen, related exhibit, photos or recorded images of the examined products;

c) The written explanation and comparison between the examined products and protected subject matter;

d) Minutes, testimonies and other documents evidencing acts of infringement.

2. A list of the documents and exhibits referred to in Clause 1 of this Article must be made, certified with the signature of the requester.

#### **Article 93. Responsibilities of requesters for handling of infringement**

A requester for handling of infringement shall ensure and be held liable for the truthfulness of the information, documents and evidence that he/she supplied.

#### **Article 94. Filing and settlement of petitions for handling of infringement**

1. A petition for handling of infringement shall be filed with agencies with competence to handle infringements defined in Article 200 of the Law on Intellectual Property (hereinafter called “the enforcement agency”).

2. Upon receiving a petition for handling of infringement, if the petition-receiving agency finds that the petition falls within the settling competence of another agency, it shall either instruct the requester to file the petition with the agency with the settling competence or forward the petition to the agency with settling competence within ten days from the date of receipt of the petition.

3. If a petition for handling of infringement lacks documents, evidence or exhibits as required, the enforcement agency shall request the requester to submit supplementary documents and evidence and fix a reasonable time limit not exceeding thirty days for the requester to do so.

4. The enforcement agency shall reject a petition for handling of infringement and state the reason for rejection in the following cases:

a) At the expiration of the fixed time limit referred to in Clause 3 of this Article, the requester for handling of infringement fails to submit supplementary documents and evidence as requested by the enforcement agency;

b) The statute of limitations for handling infringements as provided for by law has expired;

c) The verification result of the enforcement agency or the police shows that there is no infringement as described in the petition;

d) A competent agency's document shows that there are insufficient grounds for handling the infringement.

5. When there is a dispute over or complaint about the right holder, the protectability or scope of protection of the industrial property, plant varieties rights, the agency that has received the petition for handling of infringement shall instruct the requester to carry out procedures for requesting settlement of the dispute or complaint at a competent agency within ten days from the date on which the dispute arises.

### **Chapter III**

## **HANDLING OF GOODS INFRINGING INDUSTRIAL PROPERTY RIGHTS AND PLANT VARIETY RIGHTS**

### **Article 95. Determination of the value of infringing goods**

1. Infringing goods are defined as follows:

a) Infringing goods are parts or details (below referred to as components) of products which contain infringing elements and can be circulated as independent products;

b) If it is impossible to detach the infringing element as an independent component of a product which can be independently circulated under Point a of this Clause, then the infringing goods shall be the whole product that contains the infringing element.

2. The value of infringing goods shall be determined by the enforcement agency at the time of occurrence of the infringement and based on the grounds which are arranged in the following priority order:

a) The quoted price of the infringing goods;

b) The actual selling price of the infringing goods;

c) The cost of the infringing goods (if not yet put into circulation);

d) The buying price of the infringing goods.

3. The value of infringing goods shall be calculated either based on components (parts, details) of the infringing products referred to at Point a, Clause 1 of this Article or on the value of the whole of the infringing products referred to at Point b, Clause 1 of this Article.

4. When the application of the bases specified in Clause 2 of this Article is inappropriate or the enforcement agency and the finance agency of the same level cannot reach agreement on the determination of the value of the infringing goods, the valuation of these goods shall be decided by the council for determination of the value of infringing goods.

The establishment, composition and working principles of the council for determination of the value of infringing goods shall comply with the provisions of law on dealing with administrative and civil offenses.

#### **Article 96. Disposal of infringing goods**

1. For trademark and geographical indication counterfeiting goods, raw materials, materials and implements mainly used for producing or trading such goods, the enforcement agency may apply one of the following measures:

a) Confiscation for distribution or use for non-commercial purposes in accordance with Article 97 of this Decree;

b) Confiscation for destruction under Article 98 of this Decree;

c) Forcing goods owners, transporters or storers to remove infringing elements and deliver out of the territory of the Socialist Republic of Vietnam transit goods being trademark counterfeiting goods, or to re-export imported goods being trademark counterfeiting goods, being raw materials, materials and means mainly used for producing the counterfeiting goods; if it is impossible to remove the infringing elements, then appropriate measures specified in Clause 4 of this Article may be applied.

For imported counterfeiting goods of geographical indications or imported raw materials, materials and means mainly used for producing or trading such counterfeiting goods, the enforcement agency may apply the measure of compelling removal of infringing elements and appropriate measures specified in Clause 4 of this Article on a case-by-case basis.

2. For the goods infringing industrial property rights and plant varieties rights that are not trademark and geographical indication counterfeiting goods, materials, raw materials and means mainly used for producing or trading such infringing goods, the enforcement agency shall apply measures to compel the goods owner, transporter or storer of those goods to remove the infringing elements from the goods, then apply appropriate measures specified in Clause 4 of this Article.

For imported goods infringing upon industrial property rights or rights to plant varieties that are not trademark and geographical indication counterfeiting goods or materials, raw materials and means mainly used to produce or trade in such infringing goods, the enforcement agency shall apply appropriate measures specified at Point c, Clause 1 of this Article.

3. Materials, raw materials and means that have the sole function of creating or commercially exploiting counterfeiting goods of trademark or geographical indication, goods infringing industrial property rights and plant varieties rights or are actually used only for that purpose shall be regarded as materials, raw materials and means mainly used for producing or trading counterfeiting goods of trademark, geographical indication, goods infringing industrial property rights and plant varieties rights.

4. On a case-by-case basis, the enforcement agency shall decide to apply measures specified at Point a, Point b, Clause 1 of this Article or at the request of the right holder, compel organizations and individuals that produce infringing goods to recall infringing goods that have been introduced into the distribution channels of that organization or individual to apply the measures specified in Points a and b, Clause 1 of this Article or other appropriate measures as it deems appropriate. In the process of issuing a decision to handle infringement, the enforcement agency may consider the related parties' proposals regarding the handling of infringement.

#### **Article 97. Compelled distribution or use for non-commercial purposes**

1. The compelled distribution or use of counterfeiting goods of trademark or geographical indication, goods infringing industrial property rights and plant varieties rights for non-commercial purposes must satisfy the following conditions:

- a) The goods are useable, not harmful to human health, pets, plants and the environment, not cultural products with toxic content;
- b) Infringing elements have been removed from the goods;
- c) Such distribution or use is for non-commercial purposes and does not unreasonably affect the normal exercise of the right holders of the industrial property or plant varieties, where the purposes of humanity, charity and public interest shall be prioritized;
- d) Persons to whom goods are distributed or delivered for use are not potential customers of the holder of industrial property rights, rights to plant varieties.

2. The provisions of Clause 1 of this Article shall also apply to raw materials, materials and means for producing and trading of trademark and geographical indication counterfeiting goods, industrial property rights and rights to plant varieties infringing goods.

#### **Article 98. Compelled destruction**

The measure of compelled destruction of trademark or geographical indication counterfeiting goods, industrial property rights and rights to plant varieties infringing goods, raw materials, materials and means mainly used for producing and trading those goods shall be applied when all the conditions for application of the measure of compelled distribution or use of goods and materials for non-commercial purposes provided in Article 97 of this Decree are not fully met.

### **Chapter IV CONTROLLING EXPORT AND IMPORT GOODS IN RELATIONS TO INDUSTRIAL PROPERTY RIGHTS, RIGHTS TO PLANT VARIETY**

#### **Article 99. Right to request control over export and import goods in Relations to Industrial Property Rights, Rights to Plant Variety**

Holders of industrial property rights, rights to plant varieties may either directly or through their legal representatives files a petition for control or supervision for the purpose of detecting imports or exports containing signs of infringement of industrial property rights, rights to plant varieties or a petition for temporary cessation of customs formalities for imports or exports suspected of infringement of industrial property rights, rights to plant varieties.

#### **Article 100. Competence to receive petitions**

Customs offices shall have the competence to receive petitions for checking or supervision or temporary cessation of customs clearance according to the provisions of Clause 1, Article 75 of the Customs Law.

#### **Article 101. Procedures for processing petitions**

1. Within 20 days after the date of receipt of a petition for checking or supervision of imports or exports, or within 2 working hours after the receipt of a petition for temporary cessation of customs clearance, the customs office shall be responsible for considering and issuing a notice on acceptance of the petition, if the petitioner has performed the obligations provided at Points a, b, c, Clauses 1 and 2, Article 217 of the Law on Intellectual Property. In case of rejection, the customs office shall reply in writing to the petitioner, clearly stating the reasons therefor.

2. After acceptance of a petition for checking or supervision of imports or exports, the General Department of Customs shall forward the Notice of acceptance to the Customs Department of provincial, municipal level and the agencies appointed by the General Department of Customs for checking and supervision. Based on the Notice from General Department of Customs, Custom Departments of the Provinces, Cities, and agencies appointed by the General Department of Customs shall conduct the search on the system database to organize implementation within the management locations.
3. Sub-departments of Customs shall be responsible for controlling and supervising to find goods suspected of infringement or deciding on temporary cessation of customs clearance based on the petitions for temporary suspension of customs clearance.

**Article 102. Order, procedure of Disposal of goods suspected of infringement:**

1. In case the goods suspected of infringement are found, at the request of the holder of industrial property rights, plant varieties rights or in exercising the power to impose administrative sanctions, the customs office shall issue a decision to temporarily cease customs clearance, and notify the temporary cessation of customs clearance to the holders of industrial property right, plant varieties rights and the owner of the suspected goods about the temporary cessation of customs clearance, whereas stating the names, addresses, facsimile numbers and telephone numbers of the concerned parties, the reason for and the duration of the temporary cessation.
2. The customs office shall continue customs clearance for the goods shipment in question according to the provisions of Clause 3, Article 218 of Law on the Intellectual Property and in the following cases:
  - a) Upon cancellation or revocation of the decision on temporary cessation of customs clearance under a decision on the settlement of the complaint or denunciation;
  - b) Upon withdrawal by the requester of the petition for temporary cessation of customs clearance.

**Article 103. Competence and procedures for proactively suspending customs procedures**

1. During customs inspection, supervision, and control, if there are clear grounds to suspect that imports or exports are counterfeiting goods of trademark, geographical indication, Sub-departments of Customs shall proactively suspend customs clearance of said goods.
2. Sub-departments of Customs must issue decisions on suspension of customs clearance and notify the holders of trademark and geographical indications if possible and importers, exporters about the suspension.
3. Suspension duration of customs clearance shall be 10 working days from the date on which Sub-departments of Customs issue decisions on suspension of customs clearance.
4. During the suspension of customs clearance, Sub-departments of Customs that issue decision on suspension of customs clearance shall be responsible for:
  - a) Requesting importers or exporters or right holders of trademarks/geographical indication (if having the contact information) to provide documents relevant to the goods (such as catalogs, assessment conclusions, foreign documents, similar case studies, ect...);
  - b) Taking samples or allowing organizations, individuals to take sample for conducting assessment or additional assessment, re-assessment at professional customs organizations or other assessment bodies as provided by the law (if necessary);
  - c) Cooperating and communicating with state management agency of industrial property when arising the disputes or complaints relating to right holders, protectability, scope of protection of the trademarks/geographical indication, competence to handle infringing actions.

d) Reporting to Customs Departments of provincial and municipal level and General Department of Customs in order to promptly deal with complicated cases.

5. Termination of suspension duration of customs procedures:

a) If the Customs determine that the goods of suspension of customs clearance are counterfeit goods of trademarks/geographical indication, and the infringement acts are within the Customs power, the Customs shall impose administrative penalties with respect to the acts of infringement of trademarks/geographical indication, counterfeiting goods of trademarks/geographical indication as provided by the law. If the infringement is not within the Customs power, Customs shall transfer the case to other enforcement authorities to settle.

b) If applicants initiate a civil proceeding, the Customs shall comply with Court remarks;

c) In case of receiving a official letter from the state management agency of industrial property notifying a dispute or complaint about the right holder, the protectability, and the scope of protection of the trademark or geographical indication, the Customs authority shall continue to carry out customs clearance for the shipment, unless the Customs had a decision to handle the case according to procedure for handling of administrative violations.

d) In case of determining that the violation has criminal signs as prescribed in the Penal Code, the Customs authority will transfer it to the competent authority to conduct investigation and prosecute according to the provisions of law;

dd) In case the Customs authority decides that the suspended goods are not counterfeiting goods of trademarks or geographical indications, the Customs authority will continue to carry out customs clearance for the shipment and notify the relevant parties.

6. If the Customs authority incorrectly suspends customs clearance thereby causing damage to goods owners, Sub-departments of Customs must pay damages and other costs to the goods owners according to the law.

#### **Article 104. Procedures for controlling exported and imported goods related to industrial property rights and rights to plant varieties**

Procedures for controlling exported and imported goods related to industrial property rights and plant variety rights comply with the provisions of this Decree and relevant regulations of customs law.

### **Chapter V ASSESSMENT OF INDUSTRIAL PROPERTY, PLANT VARIETIES RIGHT**

#### **Section 1: ASSESSOR OF INDUSTRIAL PROPERTY, PLANT VARIETIES RIGHT, INDUSTRIAL PROPERTY ORGANIZATIONS OF INDUSTRIAL PROPERTY, PLANT VARIETIES RIGHT**

#### **Article 105. Operation form of assessor of industrial property, plant varieties rights.**

1. Industrial property, plant varieties right assessors may operate independently or as a member of an intellectual property assessment organization.

2. The operation forms of assessors are recorded in the List of Industrial Property Assessors and List of Assessors of Plant Varieties Right stipulated in Article 109 and 112 of this Decree.

3. In case the assessors operate as a member of an assessment organization of intellectual property, plant varieties rights, the information of assessors should be recorded in the List of Assessors of the Organization according to the procedure of granting of assessment organization certificate.

#### **Article 106. Rights and obligations of assessors of industrial property, plant varieties rights**

1. Industrial property, rights to plant varieties assessors shall have the following rights:

- a) To refuse to perform assessment in case the relevant documents are insufficient or are irrelevant to make assessment conclusions, or do not belong to the assessment specialty recorded in the assessor's card;
- b) To refuse to receive samples for assessment in cases where there is a risk of harm to health or the sample is too bulky and does not have enough infrastructure for storage;
- c) To use examination results or conclusions of professionals or comments of experts in service of assessment;
- d) Industrial property, rights to plant varieties assessors operating independently have the right to request agencies, organizations and individuals to provide information and documents related to the subject of assessment for carrying out the assessment, unless otherwise prescribed by law;
- dd) Other rights as prescribed by law.

2. Industrial property, rights to plant varieties assessors shall have the following obligations:

- a) To operate in accordance with the assessment specialty recorded in the assessor's card;
- b) To carry out the assessment according to the principles specified in Clause 4, Article 201 of the Intellectual Property Law;
- c) To prepare assessment dossiers; explain assessment conclusions if so requested of the assessment requester, organizations, individuals with related rights and interests, or competent authorities;
- d) To preserve and store documents and samples related to the assessment case according to the provisions of law;
- dd) To independently make assessment conclusions and be responsible for assessment conclusions; to compensate for damage when intentionally making false assessment conclusions, causing damage to concerned individuals and organizations;
- e) To refuse to perform assessment when the assessors have rights or benefits relating to the subject matters of assessment or the cases in which assessment is required or where there exist other reasons that may influence the objectiveness of assessment conclusions or in cases where other laws require that the assessment must be refused;
- g) To keep confidential information and documents at the request of the agencies, organization or individual requesting the assessment and must compensate for damages in case of disclosure of confidential information causing damage to the relevant agencies, organization and individuals;
- h) Be responsible before the law for taking advantage of assessment status and assessment activities for personal gain or intentionally making untrue assessment conclusions;



- i) To implement the information regime and report on the status of assessment activities periodically every 6 months and annually in writing to the specialized state management agency on industrial property and rights to plant varieties;
- k) Other obligations as prescribed by law.

**Article 107. Rights and obligations of assessment organizations of industrial property, rights to plant varieties**

1. Industrial property, rights to plant varieties assessment organizations shall have the following rights:

- a) Hire industrial property, rights to plant varieties assessors to conduct assessments on a case-by-case basis;
- b) Request agencies, organizations and individuals to provide information and documents related to the subject of assessment to carry out the assessment, unless otherwise prescribed by law;
- c) Other rights as prescribed by law.

2. Industrial property, rights to plant varieties assessment organizations shall have the following obligations:

- a) To operate in accordance with the assessment field stated in the Certificate of assessment organization;
- b) To carry out the assessment according to the principles specified in Clause 4, Article 201 of the Intellectual Property Law;
- c) To preserve and store documents and samples related to the assessment case according to the provisions of law;
- d) To keep confidential information and documents at the request of the agencies, organization or individual requesting the assessment and must compensate for damages in case of disclosure of confidential information causing damage to the relevant agencies, organization and individuals;
- dd) To refuse assessment in cases where other laws require that the assessment must be refused;
- e) Be responsible before the law for taking advantage of assessment status and assessment activities for personal gain or intentionally making untrue assessment conclusions;
- g) To implement the information regime and report on the status of assessment activities periodically every 6 months and annually in writing to the specialized state management agency on industrial property and rights to plant varieties;
- h) Other obligations as prescribed by law.

**Section 2. CONTENTS OF STATE MANAGEMENT ON ASSESSMENT OF INDUSTRIAL PROPERTY**

**Article 108. Examination of assessment profession of industrial property**

1. The examination of assessment profession of industrial property is conducted to assess the ability to use knowledge, professional skills to assess, conclude the matters regarding industrial property rights.
2. The organization for examination of assessment profession of industrial property rights is conducted as follows:

a) State management agency of industrial property is the competent agency organizing the examination of assessment profession of industrial property;

b) State management agency of industrial property informs on its portal, in which clearly states the requirements to participate in the examination, application procedures, examination contents and estimated time, location of the examination;

c) The examination must be held within 03 months from the date that there is at least 05 participants with application dossiers accepted as regulated in Item 4 of this Article;

d) The examination result is notified by state management agency of industrial property to the participants. The participant has the rights to request the state management agency of industrial property review this result;

dd) The examination result is valid for 05 years for requesting state management agency of industrial property to grant assessor's card on industrial property.

3. Council for examination of assessment profession of industrial property is established by state management agency of industrial property, it has the task of organizing the examination of assessment profession of industrial property according to the Regulations on examining the assessment profession of industrial property issued by said state management agency.

4. The registration for examination of assessment profession of industrial property is conducted as follows:

a) Individuals who fully meet the following requirements can register to participate the examination according to the provisions of this Article:

a1) Be a Vietnamese citizen, have full civil act capacity;

a2) Have a permanent residence in Vietnam;

a3) Have good moral qualities;

a4) Have a university degree or higher in a major relevant to the examining field;

a5) Have practiced professional activities in that field for 05 years or more.

b) Registration dossier to participate in the examination of assessment profession of industrial property filed to the state management agency of industrial property includes 01 set of documents as follows:

b1) Registration form for participating the examination of assessment profession of industrial property according to Form No.01 in Appendix VI of this Decree;

b2) Copy of university or postgraduate diploma (present the original for comparison, unless the copy has been certified);

b3) Copy of recruitment decision or labor contract and other documents proving the actual professional activities (present the original for comparison, unless the copy has been certified);

b4) 02 portrait photos 3 x 4 (cm);

b5) Payment receipts (in the case of fees and charges are paid via postal service or directly to the bank account of the State management agency of industrial property).

c) Within 20 days from the date of receipt of the dossier, the state management agency of industrial property is responsible for processing the dossier according to the following regulations:

c1) In case the dossier is valid, the state management agency of industrial property issues the notice of acceptance of dossier, in which clearly states that examination plan that is settled or not settled due to insufficient number of participants according to regulations in Item 2 of this Article;

c2) In case the dossier has shortcomings, state management agency of industrial property issues the notice of intention to refuse the dossier, in which clearly states the grounds and set the deadline of 01 month from the issuance date of notice for participant of examination to fix the shortcomings or submit response. At the end of the set deadline, if the participant of examination does not fix the shortcomings or the amendment does not meet the requirements, does not have response or the response not appropriate, the state management agency of industrial property shall issue the refusal decision clearly stating the grounds for refusal.

### **Article 109. Grant, re-grant, revocation of industrial property assessor's card**

1. The state management agency in charge of industrial property has the authority to grant, re-grant, and revoke industrial property assessor's cards, prepare and publish a list of industrial property assessors according to the procedures specified in Clause 1 of this Article. Clauses 2, 3, 4 and 5 of this Article.

2. The grant of industrial property assessor's cards is carried out as follows:

a) People who fully meet the conditions prescribed in Clause 3, Article 201 of the Intellectual Property Law will be granted an industrial property assessor's card by the state management agency of industrial property if requested and pay fees and charges according to regulations. The conditions for being granted an industrial property assessor's card specified in Clause 3, Article 201 of the Intellectual Property Law are understood as follows:

a1) The condition "Permanent residence in Vietnam" is understood as having a permanent residence in Vietnam according to the provisions of law on residence;

a2) The condition "Having good moral qualities" is understood as not being subject to administrative violations due to violations of the law on industrial property or violations of professional ethics and are not subject to criminal prosecution or have been convicted but have not had their criminal records expunged;

a3) The condition "Having a university degree or higher in a major relevant to the field requesting for an assessor's card" is understood as having a university or post-graduate degree in natural sciences or technical sciences for specialized sectors of assessment of inventions and layout design of semiconductor integrated circuit; having a university or post-graduate degree in any sector for other specialized sectors of assessment

a4) The condition "Practically engaged in professional activities in the field applying for the assessor's card for 5 years or more" is understood as having directly worked on dispute resolution, complaints, inspection, and supervision, investigation, legislation, legal consultancy on industrial property, scientific research with the title of researcher, teaching of industrial property with the title of lecturer for 5 years or more, or those who have directly Interpreted and guided the implementation of legal regulations, developed regulations, directly implemented or reviewed the results of substantive examination of patent applications (including utility solutions), or industrial design application, or trademark application or geographical indication application (including the appellation of origin of goods) at national or international industrial property offices for 5 years or more, or those who have practiced industrial property representation services for 5 years or more.

b) A dossier requesting for granting of an industrial property assessor's card submitted to the state management agency of industrial property includes 01 set of the following documents:

b1) Request for granting of an assessor's card according to Form No. 02 in Appendix VI of this Decree;

b2) Copy of Citizen identification card (present the original for comparison, unless the copy has been certified), except in the case where the Request for granting of industrial property assessor's card has information about the Citizen identification number;

b3) 02 portrait photos of 3 x 4 (cm);

b4) Fee payment receipts (in case of payment of fees and charges via postal service or direct payment to the account of the state management agency of industrial property).

c) Within 01 month from the date of receipt of the dossier, the state management agency of industrial property shall review the dossier according to the following regulations:

c1) In case the dossier is valid, the state management agency of industrial property shall issue a decision to grant an assessor's card, clearly stating the full name, date of birth, permanent address, citizen identification number, number of assessor's card and assessing expertise of the person to whom the card is granted; Record the grant of the Card in the National Register of Industrial Property Assessment and publish it in the Industrial Property Official Gazette and the Electronic Information Portal of that agency within 02 months from the date of decision;

c2) In case the dossier is invalid, the state management agency of industrial property shall issue a notice of provisional refusal of the request, clearly stating the reason and setting a time limit of 01 month from the date of notice for the person requesting the issue of the assessor's card to correct shortcomings or express objected opinions. At the end of the set time limit, if the person requesting for the assessor's card does not correct the shortcomings or the correction is unsatisfactory, has no response or response is not appropriate, the state management agency of industrial property issues a refusal decision to grant an assessor's card, clearly stating the reason for refusal;

c3) The assessor's card is made according to Form No. 04 in Appendix VI of this Decree.

3. Re-grant of the industrial property assessor's card is carried out as follows:

a) In the following cases, the state management agency of industrial property shall issue a decision to re-grant the industrial property assessor's card if the assessor requests and pays fees and charges according to regulations. :

a1) The industrial property assessor's card is lost, defective, or damaged (torn, dirty, faded, etc.) to the point of being unusable;

a2) The information recorded in the industrial property assessor's card according to the provisions of Point c1, Clause 2 of this Article has changed.

b) The assessor is obliged to request the state management agency of industrial property to re-grant the industrial property assessor's card to record the changes mentioned in point a2 of this clause;

c) A dossier requesting re-grant of an industrial property assessor's card submitted to the state management agency of industrial property includes 01 set of the following documents:

c1) Request for re-granting of Assessor's Card, made according to Form No. 03 in Appendix VI of this Decree

c2) Copy of Citizen identification card (present the original for comparison, unless the copy has been certified), except in the case where the Request for re-granting of industrial property assessor's card has information about the Citizen identification number for the case specified in point a2 of this clause;;

c3) two portrait photos 3 x 4 (cm);

c4) Copy of fee payment receipts (in case of payment of fees and charges via postal service or direct payment to the account of the state management agency of industrial property).

d) Processing of dossiers requesting re-grant of industrial property assessor's cards is carried out as follows:

d1) Within 20 days from the date of receipt of the dossier requesting re-grant of the industrial property assessor's card, the state management agency of industrial property shall review the dossier in the same order as for the procedures for granting an industrial property assessor's cards according to the provisions of Point c, Clause 2 of this Article.

d2) In case the industrial property assessor's card is defective due to the mistake of the state management agency of industrial property, the state management agency of industrial property is responsible for re-granting the industrial property assessor's card within 05 working days from the date of receiving the request from the Card holder, no fee will be charged when re-granting the Card.

4. The revocation of the industrial property assessor's card is carried out as follows:

a) The industrial property assessor's card is revoked in the following cases:

a1) There is evidence to confirm that the assessor's card was granted contrary to the law;

a2) The person granted the assessor's card no longer meets the conditions specified in Clause 3, Article 201 of the Intellectual Property Law;

a3) The person who is granted an assessor's card gives up the assessing activity;

a4) The person who is granted an assessor's card is punished by revoking the assessor's card according to the decision of the competent authority.

b) The state management agency of industrial property shall proactively or at the request of an organization or individual revoke if there are grounds to confirm that the person granted with an industrial property assessor's card falls into one of the cases specified in Point a of this Clause.

c) Dossier requesting revocation of industrial property assessor's card submitted to the state management agency of industrial property includes 01 set of the following documents:

c1) Request for revocation of industrial property assessor's card;

c2) Evidence to prove the basis for requesting revocation of the industrial property assessor's card.

d) The procedure for revoking the industrial property assessor's card is as follows:

d1) In case an organization or individual requests to revoke the industrial property assessor's card according to the provisions of Point c of this Clause, within 01 month from the date of receipt of the request, the state management agency of industrial property shall notify in writing of this request to the person granted industrial property assessor's card and set a time limit of 01 month from the date of notification for that person to give opinions. Based on the consideration of the opinions of the parties, the state management agency of industrial property shall issue a decision to revoke or refuse to revoke the industrial property assessor's card for the parties;

d2) In case there are grounds to confirm that the person granted an industrial property assessor's card no longer meets the conditions specified in Clause 2, Article 201 of the Intellectual Property Law, the state management agency of industrial property shall notify in writing the intention to revoke the industrial

property assessor's card for the person granted industrial property assessor's card and set a time limit of 01 month from the date of notification for that person to give opinions. Based on the consideration of the opinions of the person granted industrial property assessor's card, the state management agency of industrial property issues a revocation decision or a notice of non-revocation the industrial property assessor's card to the person granted card;

d3) In case there is a decision to revoke the industrial property assessor's card of a competent state agency, within 01 month from the date of receiving the above decision, the state management agency of industrial property issues a revocation decision of the industrial property assessor's card;

d4) The revocation decision of the industrial property assessor's card is recorded by the state management agency of industrial property in the National Register of Industrial Property Assessors and published in the Industrial Property Official Gazette; Electronic information portal of that agency within 02 months from the date of decision.

5. The preparation and posting of the List of industrial property assessors is carried out as follows:

a) The state management agency of industrial property prepare a List of industrial property assessors including recorded information according to decisions on grant, re-grant, and revocation of industrial property assessor's cards and post and update on the electronic information portal of the state management agency of industrial property annually;

b) The state management agency of industrial property shall notify the local state management agency of industrial property of information about changes relating to assessor's cards of assessors operating in corresponding local organizations of industrial property assessment in order to serve work of grant, re-grant and revocation of certificate of assessment organizations in localities within 02 months from the date of decision.

#### **Article 110: Grant, re-grant, revocation of the Certificate of industrial property assessment organization**

1. The authority to grant, re-grant and revoke the Certificate of industrial property assessment organization is as follows:

a) The state management agency of industrial property has the authority to grant, re-grant and revoke the Certificate of industrial property assessment organization according to the provisions of Clauses 2, 3, 4 and 5 of this Article for the public service units that are science and technology organizations registered for science and technology operations at the Ministry of Science and Technology;

b) The local state management agency of industrial property has the authority to grant, re-grant, and revoke the Certificate of assessment organization according to the provisions of Clauses 2, 3, 4 and 5 of this Article for organizations registering for business and operation at the local competent state agency as prescribed in Clause 2, Article 201 of the Intellectual Property Law.

2. Grant of the Certificate of industrial property assessment organization is carried out as follows:

a) Organization that meets the conditions prescribed in Clause 2, Article 201 of the Intellectual Property Law will be granted a Certificate of industrial property assessment organization by the state management agency of industrial property, the local state management agency of industrial property if that organization requests and pays fees and charges according to regulations;

b) The dossier of the request for granting Certificate of industrial property assessment organization filed to the state management agency of industrial property, the local state management agency of industrial property includes 01 following set of documents:

b1) Request for granting the Certificate of industrial property assessment organization, made according to Form No. 05 in Appendix VI of this Decree;

b2) Copy of the recruitment decision or labor contract between the organization and the industrial property assessor working for the organization (present the original for comparison, unless the copy has been certified);

b3) Receipt of fee payment (in the case of paying fees and charges via postal service or directly to the bank account of the agency competent to handle this procedure).

c) Within 01 month from the date of receipt of the dossier, the state management agency of industrial property, the local state management agency of industrial property shall review the dossier according to the following regulations:

c1) In case the dossier meets the requirements, the state management agency of industrial property, the local state management agency of industrial property shall issue a decision to grant a Certificate of assessment organization, in which clearly state the full name, transaction name, address, code of the organization and assessment specialized sectors of organization corresponding to assessment specialized sectors of assessors of organization, list of industrial property assessors being members of organization; record the grant of Certificate of assessment organization in the National Register of Industrial Property Assessment and publish it in the Industrial Property Official Gazette, the Electronic Information Portal of the state management agency of industrial property within 02 months from the date of decision;

c2) In case the dossier has shortcomings, the state management agency of industrial property, the local state management agency of industrial property shall issue a notice of provisional refusal, clearly stating the reason and setting a time limit of 01 month from the date of notice for the organization requested for granting Certificate of industrial property assessment organization to correct the shortcomings or express objected opinions. Within the time limit, if the organization requested for granting Certificate of industrial property assessment organization does not correct the shortcomings or corrects the shortcomings unsatisfactorily, has no objected opinion against refusal or objected opinions are not appropriate, the state management agency of industrial property, the local state management agency of industrial property shall issue a refusal decision to grant Certificate of industrial property assessment organization, clearly stating the reason for refusal;

c3) Certificate of industrial property assessment organization is made according to Form No. 07 in Appendix VI of this Decree.

3. Re-grant of the Certificate of industrial property assessment organization is carried out as follows:

a) In the following cases, the state management agency of industrial property, the local state management agency of industrial property shall issue a decision to re-grant the Certificate of industrial property assessment organization if the industrial property assessment organization requests and pays fees and charges according to regulations:

a1) The Certificate of industrial property assessment organization is lost, defective, damaged (torn, dirty, faded, etc.) to the point of being unusable;

a2) The information recorded in the Certificate of industrial property assessment organization according to the provisions of point c1, Clause 2 of this Article has changed.

b) The industrial property assessment organization is obliged to request the agency that has granted the Certificate of industrial property assessment organization to re-grant the Certificate of industrial property assessment organization to record the changes mentioned in point a2 of this Clause;

c) A dossier of the request for re-granting Certificate of industrial property assessment organization filed to the state management agency of industrial property, the local state management agency of industrial property includes 01 set of the following documents:

c1) Request for re-granting the Certificate of industrial property assessment organization, made according to Form No. 06 in Appendix VI of this Decree;

c2) Copy of the amended Business Registration Certificate or Operation Registration Certificate of the industrial property assessment organization in case there is a change in the organization's information (present the original for comparison, unless the copy has been certified), except in the case where the Request for re-granting Certificate of industrial property assessment organization already has information about the Enterprise Code;

c3) Copy of the recruitment decision, labor contract or decision to terminate the labor contract between the organization and the industrial property assessor working for the organization in case there is a change in the industrial property assessor (present the original for comparison, unless the copy has been certified);

c4) Receipt of fee payment (in the case of paying fees and charges via mail or directly to the bank account of the agency competent to handle this procedure).

d) Processing of dossier of the request for re-granting Certificate of industrial property assessment organization is carried out as follows:

d1) Within 20 days from the date of receiving the request for re-granting Certificate of industrial property assessment organization, the state management agency of industrial property, the local state management agency of industrial property shall review the dossier in the same order as the procedures for granting the Certificate of industrial property assessment organization according to the provisions of Point c, Clause 2 of this Article;

d2) In case the Certificate of industrial property assessment organization is defective due to the mistake of state management agency of industrial property, the local state management agency of industrial property that granted Certificate, the agency that granted the Certificate is responsible for re-granting the Certificate within 05 working days from the date of receiving the request from industrial property assessment organization, no fee will be charged when re-granting the Certificate.

4. Revocation of the Certificate of industrial property assessment organization is carried out as follows:

a) The Certificate of industrial property assessment organization is revoked in the following cases:

a1) There is evidence to confirm that the Certificate of industrial property assessment organization was granted contrary to the law;

a2) The organization that was granted the Certificate no longer meets the conditions prescribed in Clause 2, Article 201 of the Intellectual Property Law;

a3) The industrial property assessment organization terminates its assessing operation;

a4) The industrial property assessment organization violating legal regulations is requested by a competent state agency to handle it by revoking the Certificate of industrial property assessment organization.

b) The state management agency of industrial property, the local state management agency of industrial property, proactively or at the request of an organization or individual, revokes the Certificate of industrial property assessment organization if there are grounds to confirm that the industrial property assessment organization falls into one of the cases prescribed in Point a of this Clause;



c) Dossier of the request for revoking the Certificate of industrial property assessment organization filed to the agency that has granted the Certificate of industrial property assessment organization, including 01 set of the following documents:

c1) Request for revoking the Certificate of industrial property assessment organization;

c2) Evidence to prove the ground for requesting revocation of the Certificate of industrial property assessment organization;

d) The procedure for revoking the Certificate of industrial property assessment organization is as follows:

d1) In case an organization or individual requests to revoke the Certificate of industrial property assessment organization according to the provisions of Point c of this Clause, within 01 month from the date of receipt of the request, the agency that has granted the Certificate shall notify in writing of this request to the organization that was granted Certificate and set a time limit of 01 month from the date of notification for that organization to give opinions. Based on the consideration of the opinions of the parties, the agency that has granted the Certificate shall issue a decision to revoke or refuse to revoke the Certificate of industrial property assessment organization for the parties;

d2) In case there are grounds to confirm that the organization that was granted the Certificate of industrial property assessment organization no longer meets the conditions prescribed in Clause 2, Article 201 of the Intellectual Property Law, the agency that has granted the Certificate of industrial property assessment organization shall notify in writing the intention to revoke the Certificate of industrial property assessment organization for the organization that was granted the Certificate and set a time limit of 01 month from the date of notification for that organization to give opinions. Based on the consideration of the opinions of the organization that was granted the Certificate, the agency that has granted the Certificate issues a decision to revoke or issues a notice of non-revocation of the Certificate to the organization that was granted the Certificate;

d3) In case there is a decision to revoke the Certificate of industrial property assessment organization of a competent state agency, within 01 month from the date of receiving the above decision, the agency that has granted the Certificate issues a decision to revoke the Certificate;

d4) The decision to revoke the Certificate of industrial property assessment organization is recorded by the state management agency of industrial property in the National Register of Industrial Property Assessors and published in the Industrial Property Official Gazette; Electronic information portal of that agency within 02 months from the date of decision.

5. The preparation and posting of the List of industrial property assessment organizations is carried out as follows:

a) The state management agency of industrial property rights prepares a List of industrial property assessment organizations including information recorded according to decisions on grant, re-grant, and revocation of Certificate of industrial property assessment organization and post and update on the Electronic information portal of the state management agency of industrial property annually;

b) The local state management agency of industrial property shall notify the state management agency of industrial property of all information on the grant, re-grant, and revocation of the Certificate of industrial property assessment organization within 01 month from the date of decision to serve the preparation of the List of industrial property assessment organizations in this Clause.

### **Section 3. CONTENTS OF STATE MANAGEMENT ON ASSESSMENT OF RIGHTS TO PLANT VARIETIES**

#### **Article 111: Examination of assessment profession of rights to plant varieties**

1. The examination of assessment profession of rights to plant varieties is conducted to assess the ability to use knowledge, professional skills to assess, conclude the matters regarding rights to plant varieties.

2. The organization for examination of assessment profession of rights to plant varieties is conducted as follows:

a) State management agency of rights to plant varieties is the competent agency organizing the examination of assessment profession of rights to plant varieties;

b) State management agency of rights to plant varieties informs on its portal, in which clearly states the requirements to participate in the examination, application procedures, examination contents and estimated time, location of the examination;

c) The examination must be held within 03 months from the date that there is at least 05 participants with application documents accepted as regulated in Clause 3 of this Article;

d) The examination result is notified by state management agency of rights to plant varieties to the participants. The participant has the rights to request the state management agency of rights to plant varieties review this result;

dd) The examination result is valid for 05 years for requesting the People's Committee of provinces, municipalities to grant assessor's card on rights to plant varieties.

3. Council for examination of assessment profession of rights to plant varieties is established by state management of agency of rights to plant varieties, has the task of organizing the examination of assessment profession of rights to plant varieties according to the Regulations on examining the assessment profession of rights to plant varieties issued by state management of agency of rights to plant varieties.

The registration for examination of assessment profession of rights to plant varieties is conducted as follows:

a) Individuals who fully meet the following requirements can register to participate the examination according to the provisions of this Article:

a1) Be a Vietnamese citizen, have full civil act capacity;

a2) Have a permanent residence in Vietnam;

a3) Have good moral qualities;

a4) Have a university degree or higher in a major relevant to the examining field;

a5) Have practiced professional activities in that field for 05 years or more.

b) Registration dossier to participate in the examination of assessment profession of rights to plant varieties filed to the state management agency of rights to plant varieties includes 01 set of documents as follows:

b1) Registration form for participating the examination of assessment profession of rights to plant varieties according to Form No.8 in Appendix VI of this Decree;

b2) Certified copy of university or postgraduate diploma;

b3) Certified copy of recruitment decision or labor contract or other documents proving the actual professional activities;

b4) 02 portrait photos 3 x 4 (cm);

b5) Receipts of fee payment (in the case of paying fees and charges via postal service or directly to the bank account of the State management agency solving this procedures).

c) Within 15 days from the date of receipt of the dossier, the state management agency of rights to plant varieties is responsible for processing the dossier according to the following regulations:

c1) In case the dossier is valid, the state management agency of rights to plant varieties issues the notice of acceptance of dossier, in which clearly states that examination plan that is settled or not settled due to insufficient number of participants according to regulations in Clause 2 of this Article;

c2) In case the dossier has shortcomings, state management agency of rights to plant varieties issues the notice of intention to refuse the dossier, in which clearly states the grounds and set the deadline of 01 month from the issuance date of notice for participant of examination to fix the shortcomings or submit objected opinions. Within the time limit, if the participant of examination does not fix the shortcomings or the amendment does not meet the requirements, does not have objected opinion or does have objected but not appropriate, the state management agency of rights to plant varieties issues the Decision of refusal, in which clearly states the grounds for refusal.

#### **Article 112. Grant, re-grant and revocation the assessor's card on rights to plant varieties**

1. People's Committee of provinces, municipalities have the competence to grant, re-grant, revoke the assessor's card on rights to plant varieties as regulations provided for in Clause 2, 3 and 4 of this Article.

2. Grant of assessor's card on rights to plant varieties is conducted as follows:

a) If the person fully meets the requirements as regulated in Clause 3, Article 201 of Vietnam Intellectual properties law, People's Committee of provinces, municipalities grant the assessor's card on rights to plant varieties if there is requests and fees, charges are settled as regulations. The requirements for granting the assessor's card on rights to plant varieties is specified in Clause 3, Article 201 of Vietnam Intellectual properties law as follows:

a1) The requirement "Have a permanent residence in Vietnam" is understood as having a permanent residence in Vietnam according to provisions of law of residence;

a2) The requirement "Have a good moral qualities" is understood as not being subject to administrative sanctions due to violating the law on plant varieties or violating professional ethics and not being subject to criminal prosecution or has been convicted but the criminal record has not been erased yet;

a3) The requirement "Have a university degree or higher in a major relevant to the field applying for Assessor's card" is understood as having a university or post-graduate degree in horticulture, agronomy, science of plant or related fields of plant varieties;

a4) The requirement "Have practiced professional activities in that field for 05 years or more" is understood as having directly worked on drafting and guiding the implementation of legal documents on plant varieties, solving dispute, appeal, denunciations, inspection of plant varieties at state management agencies on plant variety protection, researching and teaching on plant variety protection in research and training organizations that are legally established and operating, or providing legal advice on plant variety protection in the name of plant variety rights representatives.

b) Dossier requesting for the granting of assessor's card on rights to plant varieties includes 01 set of the following documents:

- b1) Request for granting an assessor card according to Form No. 09 in Appendix VI of this Decree;
  - b2) Original or certified copy of Certificate of satisfaction of professional examination requirements for plant variety rights assessor;
  - b3) Copy of university degree or post-graduate diploma majoring in horticulture, agronomy or related field of plant varieties;
  - b4) Documents certified by a competent agency that the applicant has directly worked in the field of plant varieties for 5 years or more;
  - b5) 02 portrait photos 3 x 4 (cm);
  - b6) Receipts of fee payment (in the case of paying fees and charges via postal service or directly to the bank account of the State management agency solving this procedures);
- c) Within 01 month from the date of receipt of the dossier, People's Committee of provinces, municipalities considers the dossier according to the following regulations:
- c1) In case the dossier is valid, People's Committee of provinces, municipalities issues the Decision of granting assessor's card on rights to plant varieties, in which clearly states full name, permanent residence address, Citizen ID number and assessing field of grantee;
  - c2) In case the dossier has shortcomings, People's Committee of provinces, municipalities issues the notice of intention to refuse the dossier, in which clearly states the grounds and sets the deadline of 01 month from the issuance date of notice for person requesting for granting an assessor's card to fix the shortcomings or submit objected opinions. Within the time limit, if the person requesting for granting an assessor's card does not fix the shortcomings or the amendment does not meet the requirements, does not have objected opinion or does have opinion but not appropriate, People's Committee of provinces, municipalities issues the Decision of refusal of granting assessor's card, in which clearly states the grounds for refusal.
  - c3) Assessor's card on rights to plant varieties is made according to Form No. 10 in Appendix VI of this Decree.

3. Re-grant of assessor's card on rights to plant varieties is conducted as follows:

- a) In the following cases, People's Committee of provinces, municipalities issues a decision to re-grant the assessor's card on rights to plant varieties if the assessor requests and pays the fees and charges according to regulations:
  - a1) The assessor's card on rights to plant varieties is lost, defective, or damaged (torn, dirty, faded, etc.) to the point of being unusable;
  - a2) The information recorded in the assessor's card on rights to plant varieties as prescribed in Point c1, Clause 2 of this Article has changed;
- b) The assessor is obliged to request the People's Committee of provinces, municipalities to re-grant the assessor's card on rights to plant varieties to record the changes mentioned in Point a2 of this Clause.
- c) The dossier requesting re-grant of assessor's card on rights to plant varieties submitted to the People's Committee of provinces, municipalities includes 01 set of the following documents:
  - c1) Request for re-granting of assessor's card, made according to Form No. 09 in Appendix VI of this Decree;
  - c2) 02 portrait photos 3 x 4 (cm);

c3) Receipts of payment (in the case of paying fees and charges via mail or directly to the bank account of the State management agency solving this procedures).

d) Process of dossiers requesting the re-grant of assessor's card on plant variety rights is conducted as follows:

d1) Within 15 days from the date of receipt of the dossier requesting the re-grant of assessor's card on plant variety rights, People's Committee of provinces, municipalities considers the dossier according to the procedures of granting assessor's card on plant variety rights as regulated in Point c, Clause 2 of this Article;

d2) In case the assessor's card on plant variety rights is defective due to mistake of People's Committee of provinces, municipalities, People's Committee of provinces, municipalities is responsible to re-grant the assessor's card on rights to plant varieties within 05 working days from the requesting date of the grantee, without charging fee when re-granting.

4. Revocation of the assessor's card on rights to plant varieties is conducted as follows:

a) The assessor's card on rights to plant varieties is revoked in the following cases:

a1) There is evidence to confirm that the assessor's card was granted contrary to the law;

a2) The person granted with the assessor's card no longer meets the requirements specified in Clause 3, Article 201 of the Intellectual Property Law;

a3) The person who is granted an assessor's card gives up the assessment activity;

a4) The person who is granted an assessor's card is punished by revoking the assessor's card according to the decision of the competent agency.

b) People's Committee of provinces, municipalities shall take the initiative or at the request of an organization or individual to revoke if there are grounds to confirm that the person granted with the assessor card has the right to a plant variety belonging to one of the cases specified in point a of this clause.

c) Dossier requesting for a revocation of assessor's card on rights to plant varieties includes 01 set of following documents:

c1) Request for revocation of assessor's card on rights to plant varieties;

c2) Evidence to prove the basis for requesting revocation of the assessor's card on rights to plant varieties.

d) Procedures for revoking the assessor's card on rights to plant varieties are conducted as follows:

d1) In case an organization or individual requests to revoke the assessor's card on rights to plant varieties according to the provisions of Point c of this Clause, within 01 month from the date of receipt of the request, people's Committee of provinces, municipalities shall notify in written Notice on this request to the person granted with the assessor's card on rights to plant varieties and set a time limit of 01 month from the date of notification for that person to give his/her opinion. Based on the consideration of the opinions of the parties, the People's Committee of provinces, municipalities shall issue a decision to revoke or to refuse to revoke the assessor's card on rights to plant varieties for the parties;

d2) In case there are grounds to confirm that the person granted the assessor's card on rights to plant varieties no longer meets the requirements specified in Clause 2, Article 201 of the Intellectual Property

Law, the People's Committee of provinces, municipalities shall notify in writing the intention to revoke the Assessor's card on rights to plant varieties to the person who is granted the Assessor's card on rights to plant varieties and set a time limit of 01 month from the date of notice issuance for that person to have an opinion. Based on the consideration of the opinions of the person granted with the assessor's card on rights to plant varieties, the People's Committee of provinces, municipalities shall issue a decision to revoke or notify not to revoke the assessor's card on rights to plant varieties for the grantee;

d3) In case there is a decision to revoke the assessor's card on rights to plant varieties from the competent agency, within 01 month from the date of receiving the above decision, the People's Committee of provinces, municipalities issues a decision to revoke the assessor's card on rights to plant varieties.

5. Preparation and publication of the List of assessors of plant variety rights, notification of changes in information related to the assessor's card are conducted as follows:

a) People's Committee of provinces, municipalities prepare a List of plant variety rights assessors according to decisions on grant and re-grant of assessor's card on rights to plant varieties and publish it on the electronic portal of People's Committee of provinces, municipalities within 02 months from the date of decision;

b) People's Committee of provinces, municipalities shall notify the state management agency on plant variety rights of the List of assessors and changes related to the assessor's cards of the assessors working for the corresponding local assessment organization of rights to plant varieties to serve the work of monitoring the grant, re-grant and revocation of local assessing organization certificates.

#### **Article 113. Grant, re-grant and revocation of Certificate of Organization for assessment profession of rights to plant varieties**

1. People's Committees of provinces and municipalities are competent agency to grant, re-grant, revoke Certificate of Organization for assessment profession of rights to plant varieties, establish and publish List of Organization for assessment profession of rights to plant varieties according to Clauses 2, 3, 4 and 5 of this Article.

2. The granting of Certificate of Organization for assessment profession of rights to plant varieties is conducted as follows:

a) Organizations that meet the requirements of Clause 2, Article 201 of Intellectual Property Law are granted the Certificate of Organization for assessment profession of rights to plant varieties by the People's Committees of provinces and municipalities, upon filing request for granting and paying the fees and charges as required;

b) The dossier for requesting for granting Certificate of Organization for assessment profession of rights to plant varieties in clude 01 set of the following documents:

b1) A request form for granting Certificate of Organization for assessment profession of rights to plant varieties, based on Sample 11 of Annex VI of this Decree;

b2) A certified copy of recruitment decision or Labour contract between the Organization and the assessor for profession of rights to plant varieties working for the Organization;

b3) Receipts of payment of fees and charges (in the case of making payments for fees and charges via postal service or directly to the count of the agency authorised to solve this procedure).

c) Within 01 month from the date of receiving the dossier, the People's Committees of provinces and municipalities examine the dossier according to the following requirements:

c1) In the case that the dossier meets the requirements, the People's Committees of provinces and municipalities issue the decision for granting the Certificate for Organization for assessment, in which clearly states full name, trading name, address of the organization, List of assessors for profession of rights to plant varieties who are members of the Organization; record on the List of Organization for assessment and publish on the electronic information portal of the People's Committees of provinces and municipalities within 05 working days starting from the date of decision issuance;

c2) In the case that the dossier has shortcomings, the People's Committees of provinces and municipalities issue the Notice of intention to refuse of the dossier, in which clearly states the reason and define a deadline of 01 month from the date of notice issuance for the Organization to overcome the shortcomings or provides opinions. Within the time limit, if the Organization has not correct the shortcomings or the correction is not satisfied, provided opinions or the opinions are not appropriate, the People's Committees of provinces and municipalities issue the decision of refusal for granting the Certification of Organization for assessment profession of rights to plant varieties, in which clearly states the reasons for the refusal;

c3) The Certificate of Organization for assessment profession of rights to plant varieties is made based on Sample 12 in Annex VI of this Decree.

3. The re-granting of Certificate of Organization for assessment profession of rights to plant varieties is conducted as follows:

a) In the following cases, the People's Committees of provinces and municipalities issue Decision of re-granting Certificate of Organization for assessment profession of rights to plant varieties if the Organization for assessment profession of rights to plant varieties file a request and pay the fees and charges according to the regulations:

a1) The Certificate of Organization for assessment profession of rights to plant varieties is lost, faulty, damaged (torn, stained, faded etc.) to the extend of unusability;

a2) There are changes of the information recorded in the Certificate of Organization for assessment profession of rights to plant varieties as stipulated in Point 1, Clause 2 of this Article.

b) The Organization for assessment profession of rights to plant varieties is due to proceed the procedures of requesting the agency who granted the Certificate of Organization for assessment profession of rights to plant varieties to re-grant the Certificate if still wishes to maintain its profession assessment.

c) The dossier for requesting for re-granting the Certificate of Organization for assessment profession of rights to plant varieties include 01 set of the following documents:

c1) A request form for re-granting Certificate of Organization for assessment profession of rights to plant varieties, based on Sample 11 of Annex VI of this Decree;

c2) Certified copy of Business Registration Certificate or amended Operation Registration Certificate of the Organization for assessment profession of rights to plant varieties in the case there are changes in the Organization's information, unless the Enterprise identification number has already been stated in the request form for re-granting the Certificate of Organization for assessment profession of rights to plant varieties.

c3) A certified copy of recruitment decision, labour contract or decision of ending labour contract between the Organization and the assessor for profession of rights to plant varieties working for the Organization in the case of changes regarding the assessor for profession of rights to plant varieties;

c4) Receipts of payment of fees and charges (in the case of making payments for fees and charges via postal service or directly to the count of the agency authorised to solve this procedure).

d) The processing of the dossier for requesting for re-granting of Certificate of Organization for assessment profession of rights to plant varieties is conducted as follows:

d1) Within 15 days from the date of receiving the dossier requesting for re-granting of Certificate of Organization for assessment profession of rights to plant varieties, the People's Committees of provinces and municipalities examine the dossier according to the procedure of re-granting of Certificate of Organization for assessment profession of rights to plant varieties stipulated in Point c, Clause 2 of this Article.

d2) In the case the Certificate of Organization for assessment profession of rights to plant varieties is mistaken caused by the People's Committees of provinces and municipalities, the agency who granted the Certificate is responsible for re-granting the Certificate within 05 working days starting from the date of receiving the request from the Organization for assessment profession of rights to plant varieties, without fee when re-granting the Certificate.

4. The revocation of Certificate of Organization for assessment profession of rights to plant varieties is conducted as follows:

a) The Certificate of Organization for assessment profession of rights to plant varieties is subjected to revocation in the following circumstances:

a1) There are evidence confirming that the Certificate of Organization for assessment profession of rights to plant varieties was granted in contrary to the Laws;

a2) The Organization no longer meet the requirements in Clause 2, Article 201 of Intellectual Property Laws;

a3) The Organization for assessment profession of rights to plant varieties has ended their assessment profession;

a4) The Organization for assessment profession of rights to plant varieties violating the Laws is handled by a competent state agency by revocation of the Certificate of Organization for assessment profession of rights to plant varieties.

b) The People's Committees of provinces and municipalities, initiatively or upon request from an organization or individual, revoke the Certificate of Organization for assessment profession of rights to plant varieties if there is grounds to confirm that the Organization for assessment profession of rights to plant varieties belongs to one of the cases stipulated in Point a of this Clause;

c) The dossier for requesting for revocation of the Certificate of Organization for assessment profession of rights to plant varieties include 01 set of the following documents:

c1) A request form for revocation of the Certificate of Organization for assessment profession of rights to plant varieties;

c2) Evidences to prove the grounds to request for revocation of the Certificate of Organization for assessment profession of rights to plant varieties:

d) The procedure of revoking the Certificate of Organization for assessment profession of rights to plant varieties is conducted as follows:

d1) In the case that an organization or individual requests for revocation of the Certificate of Organization for assessment profession of rights to plant varieties as stipulated in Point c of this Clause, within 01 month from the date of receiving the request, the agency that granted such Certificate, issue a written notice about such request to the organization that was granted with such Certificate and define a time limit of 01 month from the date of issuing the notice for the organization to provide opinions. Based on



consideration of opinions from the parties, the agency that granted such Certificate issues a decision to revoke or to refuse to revoke the Certificate of Organization for assessment profession of rights to plant varieties to the parties;

d2) In the case there are evidences confirming that the organization that was granted with the Certificate of Organization for assessment profession of rights to plant varieties no longer meets the requirements in Clause 2, Article 201 of Intellectual Property Laws, the agency that granted such Certificate issues a written notice about intention to revoke the Certificate to the organization that was granted with such Certificate and define a time limit of 01 month from the date of issuing the notice for the organization to provide opinions. Based on consideration of such opinions from the organization that was granted the Certificate, the agency that granted such Certificate issues a decision to revoke of the Certificate or a notice of not revoking the Certificate to the organization that was granted;

d3) In the case there is a decision to revoke the Certificate of Organization for assessment profession of rights to plant varieties from the competent state agency, within 01 month from the date of receiving such decision, the agency that granted such Certificate issue a decision to revoke the Certificate;

d4) The decision to revoke the Certificate of Organization for assessment profession of rights to plant varieties is published by the People's Committees of provinces and municipalities on the electronic information portal of the People's Committees of provinces and municipalities within 02 months from the date of the decision.

5. The People's Committees of provinces and municipalities establish the List of Organizations for assessment profession of rights to plant varieties as stipulated in this Article according to the decisions of grant, re-grant, revocation of the Certificate of Organization for assessment profession of rights to plant varieties. The list of Organizations for assessment profession of rights to plant varieties is published on the electronic information portal of the People's Committees of provinces and municipalities. The People's Committees of provinces and municipalities update the management state agency for rights of plant varieties of the List of Organizations for assessment profession of rights and the changes regarding the Organization for assessment profession of rights to plant varieties in the respective region to serve the act of registering the information into the National Register of List of Organizations for assessment profession of rights to plant varieties.

#### **Section 4. ASSESSMENT ACTIVITIES OF INDUSTRIAL PROPERTY AND OF RIGHTS TO PLANT VARIETIES**

##### **Article 114. Content and areas of assessment of industrial property and rights to plant varieties**

1. Assessment of industrial property and of rights to plant varieties shall cover the following contents:

a) Determination of the scope of industrial property right protection, rights to plant varieties;

b) Determination whether the assessed object meets the conditions to be considered as the infringing elements in the industrial property rights, rights to plant varieties as regulated in Articles 74 to 80 of the Decree;

c) Determination whether there is any overlap, equivalent similarity, confusion, difficulty in distinguishing or copying between the assessed object and the protected subject matter;

d) Determination of the value of industrial property rights, rights to plant varieties according to the valuation method prescribed in the Price's Law; determine the damages as regulated in Articles 204 and 205 of the Intellectual Property Law.

2. Assessment of industrial property, rights to plant varieties according to the areas as regulated in the Intellectual Property Law including:

a) Industrial property assessment areas, including the following majors:

- a1 ) Assessment of invention and layout design;
  - a2 ) Assessment of industrial design;
  - a3 ) Assessment of trademarks and geographical indications;
  - a4 ) Assessment of other industrial property rights.
- b) Field of assessment of rights to plant varieties.

**Article 115. Rights and obligations of the requestor for assessment of industrial property, rights to plant varieties**

1. Requestor for assessment of industrial property, rights to plant varieties has the following rights:
- a) Request the assessment organization and assessor to make the assessment conclusion in accordance with the required content and within the time limit;
  - b) Request assessment organization, assessor for explaining assessment conclusions;
  - c) Request additional assessment or re-assessment as regulated in Article 120 of the Decree;
  - d) Agreement on price for assessment services.
2. The requestor for assessment has the following obligations:
- a) Provide completely and truthfully the documents, evidence, and information related to the assessed object at the request of the assessment organization and assessor;
  - b) Present clearly and particularly the issues required for assessment;
  - c) Pay assessment costs as agreed; pay the assessment costs in advance upon the request of assessment organizations or assessors;
  - d) Receive the assessed object upon the request of the assessment organization or assessor.

**Article 116. Request for assessment of industrial property, rights to plant varieties**

1. Organizations and individuals that have the right to request for assessment of industrial property, rights to plant varieties, shall include:
- a) Holders of industrial property rights and rights to plant varieties;
  - b) Organizations and individuals subject to infringement actions or complaints or denunciations regarding industrial property rights or rights to plant varieties;
  - c) Other organizations and individuals that have rights, benefits related to disputes, infringements, complaints and denunciations regarding industrial property rights, rights to plant varieties.
2. Organizations and individuals specified in Clause 1 of this Article have the right to request by themselves or authorize other organizations, individuals for request the assessment of industrial property, rights to plant varieties by the assessment organization, and assessors of industrial property, rights to plant varieties.
3. Independent assessor or assessment organizations receive assessment request documents, estimate costs for assessment performance, negotiate and sign assessment contracts with organizations and individuals requesting for assessment, excepting the refusal to assessment according to the regulations.

4. Assessment request must be made as an assessment service contract between the assessment requestor and the assessment organization or assessor.

5. Assessment service contract may have the following contents:

- a) Name and address of the organization or individual requesting the assessment;
- b) Name and address of the assessment organization or assessor;
- c) Content to be requested for assessment;
- d) Relevant evidence, documents, and items;
- dd) Time limit for obtaining the assessment conclusions;
- e) Rights and obligations of the parties;
- g) Location and duration of assessment;
- h) Fees for the assessment and payment method;
- i) Acceptance and liquidation of the contract ;
- k) Liability to compensate for damage; dispute resolution method.

**Article 117. Delivery, receipt, and return of objects for assessment on industrial property, rights to plant varieties**

When the request for assessment includes the assessment object, the delivery, receipt, and return of the assessment object must be recorded in writing that must have the following principal contents:

1. Time and place of delivery, receipt and return of the assessment object.
2. Names and addresses of the deliverer and recipient of the assessment object or of their representatives.
3. Name of the assessment object; relevant documents or items.
4. Status and method of preserving the assessment object upon delivery, receipt, and return.
5. Signatures of the deliverer and recipient of the assessment object or of the representatives in case of authorizing a third party to request the assessment.

**Article 118. Taking samples for assessment of industrial property, rights to plant varieties**

1. Assessment organizations and assessors may directly take samples for assessment by themselves (particular exhibits that are infringing elements and industrial property subject matters, rights to plant varieties are being protected) or request the requestor for assessment to provide the assessment sample. The taking of samples for assessment must be recorded in writing to witness of the involved parties who shall sign this record for certification.
2. Delivery, receipt, and return of assessment samples are carried out similarly as regulated in Article 117 of the Decree.

**Article 119. Performance of assessment on industrial property, rights to plant varieties**

1. The assessment on industrial property and rights to plant varieties may be performed by one or several assessors of industrial property, rights to plant varieties. Individual assessment means assessment performed by a single assessor. Collective assessment means assessment performed by two or more assessors.

2. In case of individual assessment, the assessor shall perform the whole of the assessment and be responsible for his/her assessment conclusions. In the case of a collective assessment of issues in the same professional area, the assessors shall jointly perform the assessment, sign the common assessment conclusion document and be jointly responsible for the assessment conclusion; If the assessors hold different opinions, each assessor shall write his/her own opinion in the common assessment conclusion document and be responsible for that opinion. In the case of collective assessment of issues in different professional areas, each assessor shall perform his or her assessment job and be responsible for his/her assessment conclusion.

#### **Article 120. Additional assessment and re-assessment of industrial property, rights to plant varieties**

1. Additional assessment shall be performed when the assessment conclusion is insufficient and unclear regarding the contents that need assessing or when new circumstances arise and need to be made clear. The request for additional assessments and the performance of additional assessments shall comply with provisions applicable to the first-time assessment

2. Re-assessment shall be performed when the assessment requester disagrees with the assessment results or when exist contradictory assessment results on the same assessed issue. Re-assessment may be performed by the assessment organization or assessor that has performed the previous assessment or by another assessment organization or assessor as requested by the requestor.

3. If there are differences between the assessment conclusions or between the assessment conclusions and the professional opinions of the State management agency on industrial property, rights to plant varieties on the same assessed issue, the requestor may further request another assessment organization or assessor to perform the re-assessment.

4. In necessary cases, when performing the assessment of industrial property rights, rights to plant varieties, the assessment organization may establish an Assessment Advisory Council of industrial property rights, rights to plant varieties that for obtaining the professional opinions on the assessed issues. The establishment of the Assessment Advisory Council shall be made as follows:

a) The assessment organization shall select members of the Council related to professional areas and issue a decision to establish an Advisory Council for assessment of industrial property and plant variety rights. The advisory council for assessment of industrial property and plant variety rights shall consist of a chairman and members. The number of members of the Advisory Council for assessment of industrial property and plant variety rights must be an odd number and have at least 03 members.

b) The Advisory Council for Assessment of industrial property and plant variety rights shall operate according to democratic principles, publicly voting on professional opinions. Members of the Advisory Council for Assessment of Industrial Property and Plant Variety Rights shall discuss collectively on expertise, and the opinions of the members shall be recorded in the meeting minutes of the Advisory Council for Assessment of industrial property, rights to plant varieties.

c) The whole of assessment consultation process of the Assessment Advisory Council of industrial property, rights to plant varieties shall be fully and honestly expressed in working record. The record shall be signed by the chairman and members of the Council and kept in the assessment dossier.

#### **Article 121. The conclusion document on assessment of industrial property, rights to plant varieties**

1. Conclusions on assessment of industrial property, rights to plant varieties as regulated in Clause 5, Article 201 of the Intellectual Property Law must be expressed in writing.

2. The conclusion document on assessment of industrial property, rights to plant varieties as specified in Clause 1 of this Article must include the following main contents:

- a) Name and address of the assessment organization and assessor;
- b) Name and address of the organization or individual requesting the assessment;
- c) Object, content, scope of assessment;
- d) Method of performing the assessment;
- dd) Assessment conclusion;
- e) Time and location for performing and completing the assessment.

3. The independent assessors, the assessment organizations shall send assessment conclusion document to the organization or individual requesting the assessment within the time limit that agreed in the assessment contract. In case of independent assessment, the assessor performing the assessment must sign into the assessment conclusion document and be responsible for the assessment conclusion. In case the organization performs the assessment, the assessor performing the assessment and the legal representative of the assessment organization both must sign and stamp into the assessment conclusion document and be responsible for the assessment conclusion.

4. In case it needs more time to perform the assessment, the independent assessor, the assessment organizations must promptly inform by a written notice to the organization or individual requesting the assessment.

#### **Article 122. Service cost of assessment on industrial property, rights to plant varieties**

Service cost of assessment on industrial property, rights to plant varieties are agreed upon by the parties.

#### **Part Five**

#### **IMPLEMENTATION**

#### **Article 123. Transition provisions**

1. The processing of confidential patent applications submitted before the effective date of this Decree when a decision for granting or refusal for granting patent has not been issued, shall be carried out according to Articles from 48 to 52 of this Decree.

2. The processing of a Hague applications designating Vietnam that have been published by the International Bureau before the effective date of this Decree but have not been issued a decision to grant or refuse to grant protection title, shall be carried out according to this Decree and the Hague Agreement.

3. The processing of Hague applications originating in Vietnam submitted to the State Management Agency of industrial property before the effective date of this Decree but have not been sent to the International Bureau yet, shall be carried out according to this Decree and the Hague Agreement.

#### **Article 124. Effect of the Decree**

1. This Decree comes into force from August 23, 2023.

2. This Decree replaces the Decree No. 103/2006/ND-CP dated September 22, 2006 detailing and guiding the implementation of several articles of the Intellectual Property Law on industrial property,

replacing provisions on protecting rights in the field of industrial property rights, rights to plant varieties and state management of intellectual property in Decree No. 105/2006/ND-CP dated September 22, 2006 detailing and guiding the implementation of articles of the Intellectual Property Law on the protection of intellectual property rights and state management of intellectual property, Decree No. 119/2010/ND-CP dated October 30, 2010 amending and supplementing several articles of Decree No. 105/2006/ND-CP dated September 22, 2006 detailing and guiding the implementation of several articles of the Intellectual Property Law on protection of intellectual property rights and state management of intellectual property, Decree No. 122/2010/ND-CP dated October 31, 2010 amending and supplementing several articles of Decree No. 103/2006/ND-CP September 22, 2006 detailing and guiding the implementation of several articles of the Intellectual Property Law on industrial property and Article 1 in Decree No. 154/2018/ ND-CP dated November 9, 2018 amending, supplementing, and abolishing a number of provisions on investment and business conditions in the field of state management of the Ministry of Science and Technology and a number of provisions on specialized appraisal.

#### **Article 125. Responsibilities for implementation**

Ministers, heads of ministerial agencies, heads of Governmental agencies, Chairpersons of provincial People's Committees are responsible for the implementation of this Decree.

ON BEHALF OF THE GOVERNMENT  
P.P. PRIME MINISTER  
VICE PRIME MINISTER  
Tran Luu Quang