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TECHNOLOGY AND
ENVIRONMENT

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**CIRCULAR
ON IMPLEMENTATION OF
PROCEDURES FOR ESTABLISHMENT OF
INDUSTRIAL PROPERTY RIGHTS AND
OTHER PROCEDURES STIPULATED IN
DECREE 63-CP DATED 24 OCTOBER 1996
OF THE GOVERNMENT MAKING
DETAILED PROVISIONS ON
INDUSTRIAL PROPERTY**

Pursuant to Decree 63-CP dated 24 October 1996 of the Government making detailed provisions on industrial property;

The Ministry of Science, Technology and Environment promulgates this Circular to make detailed provisions on and guide the implementation of the procedures for establishment, filing and examination of applications for certificates of protection, procedures for approval and registration of contracts for transfer of industrial property rights, procedures for consideration of applications for compulsory licensing, procedures for amendment and extension of validity of certificates of protection, procedures for processing applications for international registration of inventions and utility solutions according to the PCT Treaty and applications for international registration of trademarks according to the Madrid Agreement; and procedures for issuing industrial property representation licences.

CHAPTER 1

General Provisions**1. Terms:**

- 1.1 The terms in this Circular shall have the meanings ascribed to them hereunder:
- *Decree* refers to Decree 63-CP dated 24 October 1996 of the Government making detailed provisions on industrial property;
 - *Application* refers to an application for issuance of a certificate of protection;
 - *Application for invention, application for utility solution, application for industrial design, application for trademark, application for appellation of origin of goods* respectively refer to an application for issuance of a certificate of exclusive right to an invention, an application for issuance of a certificate of exclusive right to an utility solution, an application for issuance of a certificate of exclusive right to an industrial design, an application for issuance of a certificate of trademark registration and an application for issuance of a certificate of right to use an appellation of origin of goods;
 - *International application* refers to an international application in respect of an invention or utility solution filed in accordance with the PCT Treaty;
 - *Application for international registration* refers to an application for international registration of a trademark filed in accordance with the Madrid Agreement on international registration of trademarks;
 - *Mark* refers to trademark in accordance with article 2 of the Decree;
 - *Underwriter of a document* is the individual, legal person or organization preparing, issuing or certifying the validity of the document.
- 1.2 Other terms shall have the same meanings as in the Decree.

2. Certification of documents:

2.1 Verification of signatures:

During the implementation of the procedures for establishment, maintenance, extension, exercise, transfer, and so forth, of industrial property rights as stipulated in this Circular, the signature of the underwriter of a document in correspondence with competent authorities must be verified to be the true signature of the underwriter of the document; in the case where the signatory is the representative of the underwriter of the document, the former must be certified to be the authorized representative of the underwriter of the document in accordance with the following provisions:

- (i) Where the underwriter has a legal seal, the verification of signatures shall be done by sealing over the signatures;
- (ii) Where the underwriter is Vietnamese and does not have a legal seal, the verification of signatures must be carried out by a State public notary or by the local authority where the underwriter of the document or his or her or its office is based;
- (iii) Where the underwriter does not have a legal seal, the verification of signatures shall be carried out by a public notary or a similar competent authority.

2.2 Certification of copies:

- (a) Any copies of documents produced by any method of copying must be certified to be true copies of the original as stipulated in paragraph (b) below prior to use as official documents during the implementation of the procedures relating to industrial property at competent authorities.
- (b) A document shall be considered to be a facsimile of the original where the copy is certified to be a true copy by one of the following agencies: (i) public notary, (ii) people's committees or competent authority, (iii) State body or social organization having produced the original; and, if the copy consists of many pages, each page must be certified or the pages must be affixed with overlapping seals.

2.3 Certification of translations:

- (a) All Vietnamese translations of documents must be certified to be correctly translated from the original as stipulated in paragraph (b) below prior to use as official documents during the implementation of the procedures relating to industrial property at competent authorities.
- (b) Certification of translations may be carried out by one of the following methods: (i) notarization, (ii) certification by the underwriter of the original, (iii) certification by all parties to the contract or agreement (if the original is a contract or agreement); (iv) recognition by the body authorized to use the translation during the process of implementing the related procedures.

3. **Persons implementing procedures relating to industrial property in the name of the underwriter:**

- 3.1 Only the persons stipulated in clauses 3.2 and 3.3 below shall be permitted to file an application, to supplement or amend application documents; to receive and reply to the opinions relating to the application from the Department of Industrial Property; to decide on the continuation or suspension of the protection process; to receive the certificate of protection; to carry out the maintenance, amendment and extension of validity of the certificate of protection as well as other procedures relating to industrial property at the Department of Industrial Property and competent authorities in the name of the underwriter.

The Department of Industrial Property may only transact with the above persons and such transactions shall be considered to be official transactions with underwriters.

- 3.2 Where underwriters are entitled to file applications and carry out the related procedures directly as stipulated in clauses 2 and 3(a) of article 15 of the Decree, the following persons shall be permitted to carry out the tasks referred to in clause 3.1 above in the name of the underwriter:
- (i) the individual or the legal representative of the individual (if the underwriter is an individual);
 - (ii) the legal representative of the underwriter; an individual who is a member of the underwriter and entrusted with representation by the legal representative of the underwriter; the head of the representative office or branch office of the underwriter entrusted

with representation by the legitimate representative of the underwriter (if the underwriter is a legal person or other underwriter);

- (iii) the head of a representative office in Vietnam of a foreign underwriter entrusted with representation by that underwriter; the legal representative of an enterprise with one hundred (100) per cent foreign owned capital established in Vietnam of a foreign underwriter who is entrusted with representation by that underwriter;
- (iv) any person satisfying one of the conditions stated in paragraphs (i), (ii), and (iii) above who is one of the individuals or one of the legal persons or other underwriters if the underwriter consists of multiple individuals, legal persons or other underwriters and if that person is entrusted with representation by all individuals, legal persons or other underwriters.

3.3 Where underwriters are only entitled to file applications and implement the related procedures through an industrial property representation service organization as stipulated in clause 3(b) of article 15 of the Decree as well as where other underwriters implement the above procedures through an industrial property representation service organization, only a person to whom a card of industrial property representation person is granted and who works for the industrial property representation service organization which has the power of attorney of the underwriter shall be entitled to carry out the tasks stipulated in clause 3.1 above.

4. Authorization for implementation of procedures relating to industrial property:

- 4.1 Authorizations for implementation of procedures relating to industrial property shall be made in writing (power of attorney) and shall include the following contents:
- (i) Names (name and surname), full address, telephone number, fax number (if any) of authorizing party;
 - (ii) Names (name and surname), full address, telephone number, fax number (if any) of authorized party;
 - (iii) Scope of authorization (tasks to be implemented by authorized party in the name of authorizing party);
 - (iv) Duration of authorization;

- (v) Place and date of preparation of power of attorney;
 - (vi) Signature of person preparing power of attorney (to be certified in accordance with the regulations on certification of signatures).
- 4.2 The authorized party must be an individual or organization entitled to implement the procedures relating to industrial property as stipulated in clauses 3.2(ii), (iii), and (iv) and 3.3 of this Circular.
- 4.3 All adjustments of the scope of authorization and early termination of authorization shall be notified in writing to the Department of Industrial Property.
- 4.4 If the scope of authorization in the power of attorney includes many independent procedures, the authorized party may submit copies of the power of attorney provided that the authorized party has submitted the original power of attorney to the Department of Industrial Property and indicated the number and date of filing of the application which includes such power of attorney.

CHAPTER II

Applications and Dealing with Applications

5. General requirements for applications:

- 5.1 Applications must ensure the uniformity stipulated in clause 2 of article 11 of the Decree and must satisfy the general requirements with respect to form stated in clause 5.2 below.
- 5.2 Applications shall meet the following requirements with respect to form:
- (i) each application shall only request the issuance of one certificate of protection and the type of certificate of protection requested to be issued shall conform with the object of industrial property stated in the application;
 - (ii) all application documents must be made in Vietnamese, except for those stipulated in clause 5.3 below which may be represented in other languages;
 - (iii) all application documents must be presented in portrait orientation on single-sided white paper of A4 size (210mm x 297mm) with twenty (20) millimetre wide margins from each of

the four edges, except for additional documents included in the application for purposes of supplementation or illustration which were not originally intended to be included and therefore may be presented in other forms;

- (iv) for documents required to be made in accordance with forms, the appropriate spaces of the specified forms shall be completed;
 - (v) each document shall be duplicated into the number of copies required; if any document consists of multiple pages, each page shall be numbered in arabic numbers in the top centre position;
 - (vi) documents must be typed or printed clearly and neatly in non-fading ink without any erasure or correction.
- 5.3 The following documents may be prepared in languages other than Vietnamese but must be translated into Vietnamese:
- (i) power of attorney (if any);
 - (ii) document certifying the lawful right to file an application if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file an application, including transfer of an application already filed; contract for work assignment or labour agreement, and so forth);
 - (iii) certificate of transfer of priority right (if the application requests priority right and such right has been received from another person);
 - (iv) related documents evidencing basis of enjoyment of priority right (first application, certificate of exhibition display, and so forth);
 - (v) original documents or copies of original documents enclosed by the applicant in support of the application.

6. Requirements for applications in respect of inventions and utility solutions:

In addition to the general requirements stipulated in clause 5 of this Circular, applications in respect of inventions and utility solutions must satisfy the requirements in this clause.

- 6.1 Applications must include the following documents:
- (i) three copies of the declaration for issuance of a certificate of exclusive right to an invention or utility solution, prepared in accordance with the form issued by the Department of Industrial Property;
 - (ii) three copies of the description of the invention or utility solution (hereinafter referred to as *the description*);
 - (iii) three copies of the request for protection;
 - (iv) three copies of the drawings, diagrams, calculations, and so forth, (if necessary) to clarify the nature of the technical solution stated in the description;
 - (v) three copies of the summary of the invention or utility solution;
 - (vi) document certifying the lawful right to file an application if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file an application; contract for work assignment or labour agreement, and so forth), in single copy;
 - (vii) power of attorney (if necessary), in single copy;
 - (viii) a copy of the first application or document certifying the exhibition display if the application requests enjoyment of priority right in accordance with an international treaty, in single copy;
 - (ix) document proving payment of application filing fee and application declaration fee, in single copy.
- 6.2 The documents stated in clause 6.1 above shall be submitted at the same time. The following particular documents may be submitted within three months of the filing of an application:
- (i) the Vietnamese version of the documents stated in clauses 6.1(ii), (iii) and (v) where the English, French or Russian version of such documents has been included in the application;
 - (ii) the original of the document stated in clause 6.1(vii), if a copy has been included in the application;

(iii) the document stated in clause 6.1(iii), including the Vietnamese translation.

6.3 The description must express in full the nature of the technical solution to be protected. The description must contain all information to the extent that, based on it, any person with average knowledge in the relevant field would be able to carry out that technical solution.

The description must clarify the new characteristics and creativity (if the object to be protected is an invention) and the applicability of the technical solution to be protected.

The description shall include the following contents:

- (i) the international index for classification of inventions (in accordance with the Strasbourg Agreement);
- (ii) the name of the technical solution;
- (iii) the field in which the technical solution is used or to which the technical solution is related;
- (iv) the technical situation for the above field at the time of filing the application (the technical solutions already known);
- (v) the nature of the technical solution;
- (vi) a brief description of drawings attached (if any);
- (vii) an example of implementation of the technical solution;
- (viii) the benefits which can be achieved (efficiency of technical solution).

6.4 The request for protection shall be used to determine the scope (quantity) of protection of an invention or utility solution. The request for protection shall be presented briefly and clearly in conformity with the description and the drawings, in which new signs of the technical solution to be protected must be clarified.

6.5 The summary of the invention or utility solution shall be used to announce briefly the nature of the invention or utility solution. The summary must express the main contents of the nature of the technical solution for the purpose of information.

- 6.6 The requirements with respect to form and contents of the description, drawings, request for protection, summary of invention or utility solution and other application documents in respect of inventions or utility solutions shall be stipulated by the Department of Industrial Property.

7. Requirements for applications in respect of industrial designs:

In addition to the general requirements stipulated in clause 5 of this Circular, applications in respect of industrial designs must satisfy the requirements in this clause.

7.1 Applications must include the following documents:

- (i) three copies of the declaration for issuance of a certificate of exclusive right to an industrial design, prepared in accordance with the form issued by the Department of Industrial Property;
- (ii) three copies of the description of the industrial design;
- (iii) six sets of photos or drawings of the industrial design;
- (iv) document certifying the lawful right to file an application if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file an application; contract for work assignment or labour agreement), in single copy;
- (v) document certifying ownership rights with respect to trademark if the industrial design bears a trademark, in single copy;
- (vi) power of attorney (if necessary);
- (vii) a copy of the first application or document certifying the exhibition display if the application requests enjoyment of priority right in accordance with an international treaty, in single copy;
- (viii) document evidencing payment of application filing fee and application declaration fee, in single copy.

7.2 The documents stated in clause 7.1 above shall be submitted at the same time. The following particular documents may be submitted within three months from the date of filing an application:

- (i) the Vietnamese version of the document in clause 7.1(ii) if the English, French or Russian version of such document has been included in the application;
- (ii) the documents in clause 7.1(v);
- (iii) the original of the document in clause 7.1(vi), if a copy has been included in the application;
- (iv) the document in clause 7.1(vii), including the Vietnamese translation.

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

- (i) the name of the industrial design;
- (ii) the international index for classification of industrial designs (in accordance with the Locarno Agreement);
- (iii) the field in which the products bearing the industrial design is used;
- (iv) any similar industrial designs already known;
- (v) a list of photos or drawings;
- (vi) the nature of the industrial design, stating clearly the basic shaping feature of the industrial design to be protected which is different from that of any similar industrial design already known.

7.4 The sets of photos or drawings must fully express the nature of the industrial design as described in order to determine the scope (quantity) of protection for the industrial design.

The photos and drawings must be clear and distinct, not mixing the products bearing the industrial design to be protected with other products.

All photos and drawings shall be prepared to the same scale. The dimensions of each photo shall not be less than ninety (90) millimetres by (x) one hundred and twenty (120) millimetres and shall not exceed two hundred and ten (210) millimetres by (x) two hundred and ninety seven (297) millimetres.

- 7.5 The requirements for the description and the photos and drawings of industrial designs shall be stipulated by the Department of Industrial Property.

8. Requirements for applications in respect of trademarks:

In addition to the general requirements stipulated in clause 5 of this Circular, applications in respect of trademarks must satisfy the requirements in this clause.

8.1 Applications must include the following documents:

- (i) three copies of the declaration for issuance of a certificate of trademark registration with a sample of the trademark affixed thereto, prepared in accordance with the form issued by the Department of Industrial Property;
- (ii) three copies of the regulations on use of trademarks if the trademark to be protected is a collective trademark;
- (iii) fifteen (15) samples of the trademark;
- (iv) document certifying the lawful right to do business (business licence or certificate of business registration, and so forth), in single copy;
- (v) document certifying the lawful right to file an application if the applicant has received the right to file the application from another person (certificate of right of inheritance, certificate or agreement for transfer of right to file an application, including an application already filed; contract for work assignment or labour agreement, and so forth), in single copy;
- (vi) power of attorney (if necessary);
- (vii) a copy of the first application or certificate of exhibition display, if the application includes a request for enjoyment of priority right in accordance with an international treaty;

- (viii) documents certifying origins, prizes, or medals, if the trademark bears such information, in single copy;
 - (ix) licence from the competent authorities, if the trademark bears the symbols, names, and so forth, stipulated in clause 2(g) of article 6 of the Decree, in single copy;
 - (x) document proving payment of application filing fee, in single copy.
- 8.2 The above documents shall be submitted at the same time. The following particular documents may be submitted within three months from the date of filing applications:
- (i) the original of the document in clause 8.1(vi), if a copy has been included in the application;
 - (ii) the document in clause 8.1(vii), including the Vietnamese translation.
- 8.3 The description of the trademark in the declaration must express clearly the distinction of the trademark and state clearly each component of the trademark as well as the overall meaning of the trademark. If the trademark bears words in languages other than Vietnamese, their pronunciations must be indicated (with transcription in Vietnamese) and, if such words have meanings, they must be translated into Vietnamese.
- If the letters and words for which protection is requested are presented in graphic form as a means for identification of the trademark, the graphic form of those letters and words must be described.
- If the trademark contains numbers which are not arabic or roman numbers, they must be translated into arabic numbers.
- If the trademark consists of many separate parts which are used on the same product, the location of each part of the trademark on the product or the packaging of the product must be indicated.
- 8.4 The list of products and services bearing the trademark in the declaration must conform with or be of the same kind as the products and services permitted to be traded in accordance with the business licence or certificate of business registration and must be classified in accordance with the Table of International Classification of Products and Services (in accordance with the Nice Agreement).

- 8.5 The sample of the trademark affixed to the declaration as well as other samples of trademarks must be presented clearly with dimensions not exceeding eighty (80) millimetres by (x) eighty (80) millimetres and the distance between the two nearest points not less than fifteen (15) millimetres.

If protection is requested for colour, the sample of the trademark must be represented in the colour to be protected.

If protection is not requested for colour, all samples of the trademarks must be represented in black and white.

9. Requirements for applications in respect of appellations of origin of goods:

In addition to the general requirements stipulated in clause 5 of this Circular, applications in respect of appellations of origin of goods must satisfy the requirements in this clause.

9.1 Applications must include the following documents:

- (i) three copies of the declaration for issuance of the certificate of right to use the appellation of origin of goods, prepared in accordance with the form issued by the Department of Industrial Property;
- (ii) a copy of the document certifying the lawful right to do business (business licence or certificate of business registration, and so forth);
- (iii) the statement on quality distinction of the products bearing the appellation of origin of goods certified by the competent State authorities, in single copy;
- (iv) the certification by the competent authorities that the products manufactured or traded by the applicant have distinct features and quality and are manufactured in the territory corresponding to the appellation of origin of goods (in conformity with the statement in clause (iii)), in single copy;
- (v) a copy of the certificate of protection for appellation of origin of goods granted in the country of origin, or documents of the country of origin certifying the right of the applicant to use the appellation of origin of goods being protected in the country of origin (if the appellation of origin of goods originates from a foreign country);

- (vi) a map of the territory corresponding to the appellation of origin of goods, indicating the place of business production of the applicant;
- (vii) power of attorney (if necessary), in single copy;
- (viii) documents proving payment of application filing fee, in single copy.

If the applicant makes a request only for issuance of the certificate of right to use the appellation of origin of goods in respect of an appellation of origin of goods which has been previously registered, it is not necessary to include the documents in clause (iii) and (vi) in the application. If the appellation of origin of goods originates from a foreign country, it is not necessary to include the documents in clauses (ii), (iii) and (vi) in the application.

- 9.2 The above documents shall be submitted at the same time. In particular, the original of the document in clause 9.1(vii) may be submitted within three months from the date of filing the application if a copy has been included in the application.
- 9.3 The bodies authorized to certify the distinct features of the products bearing the appellation of origin of goods and to certify that the product manufactured by the applicant bears such distinct features shall be quality control bodies at the central level or in the locality of the appellation of origin of goods.

10. Filing applications:

Applications may be filed at the Department of Industrial Property or at any other locations for receipt of applications established by the Department of Industrial Property. Applications may also be sent by registered post to the above locations.

11. Accepting applications:

- 11.1 After receiving an application, the Department of Industrial Property shall carry out the following: (i) to check the list of documents stated in the declaration; (ii) to seal the declaration with certification of the date on which the application reached the Department of Industrial Property; (iii) to note the differences between the list of documents stated in the declaration and the actual number of documents in the application; (iv) to carry out preliminary examination of the application to make decision on acceptance or rejection of the application in accordance with clause 11.2 below; (v) to send to the

applicant a declaration which has been sealed with certification of the date of receipt of the application, the number of the application and the result of checking the list of documents with the full name and signature of the person receiving the application; (the above declaration shall replace the receipt for the application).

11.2 The Department of Industrial Property shall not accept applications if applications have one of the following shortcomings:

- (i) Applications lack one of the following compulsory documents: the declaration which must include a sample of the trademark and the list of products and services (for applications in respect of trademarks), the appellation of origin of goods and kind of goods (for applications in respect of appellations of origin of goods), the description of the invention or utility solution, the request for protection (for applications in respect of inventions or utility solutions), the description of the industrial design and set of photos and drawings of the industrial design (for applications in respect of industrial designs), the power of attorney (for applications requiring a power of attorney), documents proving payment of fees;
- (ii) The form of protection (kind of certificate of protection requested to be issued) does not conform with the object of industrial property stated in the application;
- (iii) The declaration does not have signatures and/or has been substantially erased or changed.

11.3 In cases where applications are not accepted, the Department of Industrial Property shall notify the applicant of the reason therefor. For applications filed by post, the Department of Industrial Property shall notify in writing within fifteen (15) days from the date of receipt of applications; the Department of Industrial Property shall not return application documents to the applicant but shall refund the fees paid with the unaccepted applications after deducting expenses from that refund.

12. Dealing with accepted application documents:

After acceptance, applications shall be dealt with as follows:

A set of documents consisting of fundamental documents shall be separated in order to preserve the initial status of an application (called the "documentation file" of an application).

The remaining documents shall form sets of documents used for examination in accordance with the provisions in this Circular.

13. Examination of form:

- 13.1 After being dealt with in accordance with clause 12 of this Circular, applications shall be examined with respect to form as stipulated in this clause.
- 13.2 An application shall be considered as improper if it has one of the following shortcomings:
- (i) The application is made in languages other than Vietnamese, except for the cases stipulated in clause 5.3 of this Circular.
 - (ii) There is insufficient information in the declaration about the author (in the case of inventions, utility solutions, industrial designs) or about the applicant, the applicant does not sign, or the signature is not certified, or the information about the representative is erased or changed.
 - (iii) There is evidence to confirm that the applicant does not have the right to file the application.
 - (iv) The application is filed inconsistently with the provisions in article 15 of the Decree.
 - (v) Within the period stipulated in clauses 6.2 and 7.2 of this Circular, the applicant fails to submit the Vietnamese version of the description, the summary, the request for protection of inventions or utility solutions or the description of industrial designs made in English, French or Russian.
 - (vi) Only copies of the power of attorney are submitted without the original within the periods stipulated in clauses 6.2, 7.2, 8.2 and 9.2 of this Circular.
 - (vii) The application has the shortcomings stated in clause 13.3 below which affect the appropriateness of the application and which, despite the request of the Department of Industrial Property, are not corrected or are not satisfactorily corrected.
 - (viii) The object stated in the application is not an object to be protected by the State as stipulated in articles 4.4, 5.3, 6.2 and 7.2 of the Decree.

13.3 Dealing with shortcomings of applications at the stage of examination of form:

If an application has the following shortcomings, the Department of Industrial Property shall notify the applicant and, within two months from the date of notification, the applicant must correct these shortcomings:

- (i) one of the documents is submitted in insufficient number of copies;
- (ii) the application lacks uniformity;
- (iii) the form of the application is not satisfactory;
- (iv) the application in respect of a trademark does not indicate the type of trademark to be registered or does not include the description of the trademark, the products in the list are not classified or are incorrectly classified;
- (v) the information about the applicant in different documents is inconsistent or has been erased or changed;
- (vi) the application filing fee has not been sufficiently paid.

13.4 The applicant may amend and supplement the documents in an application but may not expand the scope (quantity) of protection nor change the nature of the object of industrial property indicated in the application and shall pay fees as stipulated. If an amendment expands the scope (quantity) of protection, or changes the nature of the object of industrial property, the applicant must submit a new application and all procedures shall be recommenced from the beginning.

13.5 Determination of the date of filing proper applications:

The date of filing proper applications shall be determined as follows:

- (i) For applications without the shortcomings stipulated in clause 13.2 above, the date of filing proper applications shall be the date on which the applications reached the Department of Industrial Property as indicated by the receipt seal on the declaration.
- (ii) For applications with the shortcomings stipulated in clause 13.2 above, and if such shortcomings have been corrected within the corresponding time period, the date of filing proper applications

shall be the date on which the applications reached the Department of Industrial Property as indicated by the receipt seal. If the shortcomings are corrected after that time period, the date of filing proper applications shall be the date on which those shortcomings are corrected to render the applications proper.

13.6 Determination of priority date:

The priority date of applications shall be determined as follows:

If applications fail to include a request for priority right, the priority date shall be the date of filing of a proper application.

If applications include a request for priority right, the priority date shall be the date stated in that request and approved by the Department of Industrial Property.

13.7 The result of examining the form of applications shall be notified to the applicant by the Department of Industrial Property in accordance with the following provisions:

- (i) where an application is deemed appropriate, the Department of Industrial Property shall send to the applicant a notice of acceptance of application, which clearly indicates the name and address of the applicant; the name of the industrial property representation service organization (if the application is filed through such organization); the name of the object stated in the application, the date of filing the proper application; the priority date; the application number; the existing shortcomings to be corrected and the time period for correcting those shortcomings. If beyond such time period the applicant fails to correct those shortcomings, the application shall not be considered further;
- (ii) where an application is deemed inappropriate, the Department of Industrial Property shall send to the applicant a notice of refusal of application, which clearly indicates the name and address of the applicant; the name of the industrial property representation service organization (if the application is filed through such organization); the date on which the application reached the Department of Industrial Property, the name of the object stated in the application, the reason for refusal (the reason for the application to be deemed inappropriate);
- (iii) where an application still has the shortcomings mentioned in clause 13.3 above, the Department of Industrial Property shall send to the applicant a notice of results of examination of the

form of application, which clearly indicates the name and address of the applicant; the name of the industrial property representation service organization (if the application is filed through such organization); the date on which the application reached the Department of Industrial Property, the name of the object stated in the application, the shortcomings to be corrected and the time period fixed for the applicant to correct such shortcomings.

- 13.8 The time period for examination of form shall be three months from the date on which applications reach the Department of Industrial Property as indicated by the receipt seal. In respect of applications with documents filed late as stipulated in clauses 6.2, 7.2, 8.2 and 9.2, the time period for examination of form shall be three months from the date on which those documents are fully submitted. Prior to the expiry of the above time period, the Department of Industrial Property shall complete the examination of form and shall notify the applicant as stipulated in clause 13.7 above.

14. Announcement of proper applications:

- 14.1 Any application in respect of inventions, utility solutions or industrial designs which has been accepted as proper shall be announced by the Department of Industrial Property in the Official Industrial Property Gazette within the time periods stipulated as follows:
- (a) Applications in respect of inventions or utility solutions shall be announced in the nineteenth month from the priority date, except for the cases stipulated in items (b), (c), and (d) below;
 - (b) Where there is a request for early announcement, applications shall be announced within one month from the date on which the Department of Industrial Property receives the request for early announcement or within the later time period stated in the request;
 - (c) For applications in respect of inventions or utility solutions, if there is a request in writing for examination of contents submitted prior to the date on which these applications are accepted as proper, applications shall be announced within one month from the date of acceptance as proper;
 - (d) For applications in respect of inventions or utility solutions, if there is a request in writing for examination of contents submitted after the date on which these applications are accepted as proper but within eighteen (18) months from the priority date,

applications shall be announced within one month from the date on which the Department of Industrial Property receives the request for examination of contents;

- (e) International applications and applications for industrial designs shall be announced in the second month from the date on which applications are accepted as proper, except in the cases stipulated in clause (b) above.

14.2 The information relating to proper applications to be announced in the Official Gazette shall include: all information about the proper applications stated in the notice of acceptance of application, except that of the shortcomings to be corrected; a summary of the invention or utility solution with enclosed drawings (if necessary); one or more photos or drawings of the industrial design.

14.3 Any person may have access to more detailed information about the nature of objects stated in applications announced in the Official Gazette of Industrial Property or may request the Department of Industrial Property to supply such information and pay fees for the information supplied as stipulated.

15. Request for examination of contents of inventions and utility solutions:

15.1 Within forty two (42) months from the priority date of applications in respect of inventions and thirty six (36) months from the priority date of applications in respect of utility solutions, the applicant or any third person may request the Department of Industrial Property to examine the contents of the inventions and utility solutions.

The person requesting examination of contents of inventions or utility solutions shall pay fees as stipulated.

15.2 Requests for examining the contents of inventions or utility solutions filed after the announcement of applications shall be announced in the Official Gazette of Industrial Property within one month of receipt of requests for examination in writing and shall be notified to the applicant.

Requests for examination of contents of inventions or utility solutions filed prior to the announcement of applications shall be announced together with the respective applications as stipulated in clauses 14.1(c) and (d) of this Circular.

15.3 Except where a request for examination of contents is stated in the declaration by the applicant himself, requests for examination of

contents of inventions or utility solutions must be made in writing, stating clearly the names and addresses of the requesting persons; the application numbers and dates of filing applications in respect of inventions or utility solutions; the contents of which need to be examined; the names and addresses of the applicants; the names of the inventions or utility solutions enclosed with receipts or documents evidencing payment of fees for examination.

16. Examination of application contents:

- 16.1 The examination of contents of applications shall be carried out by the Department of Industrial Property as stipulated in this clause in the case of:
- (i) all applications in respect of trademarks, industrial designs and appellations of origin of goods if those applications have been accepted as proper and the applicants have paid fees for examining the contents of applications as stipulated;
 - (ii) all international registration applications; and
 - (iii) applications in respect of inventions or utility solutions, including international applications which have been accepted as proper and the contents of which are requested to be examined, filed with the Department of Industrial Property within the time period stipulated in clause 15 of this Circular.
- 16.2 The purpose of examination of contents of applications shall be to evaluate the possibility of protection of the objects stated in applications in accordance with the protection criteria and to determine the respective scopes (quantity) of protection.
- 16.3 Within the time period for examination of contents of applications, the Department of Industrial Property must send a notice of results of examination of contents to the applicant and the person requesting examination of contents in accordance with the following provisions:
- (a) where an object of industrial property does not satisfy the protection criteria, in the notice of results of examination of contents, the Department of Industrial Property must indicate clearly the reasons for the intention to refuse to issue a certificate of protection and set aside a period of two months from the date of notification for the applicant to make comments;

- (b) where an object of industrial property satisfies the protection criteria but the scope (quantity) of protection must be reduced or applications still have shortcomings, in the notice of results of examination of contents, the Department of Industrial Property must indicate that the applicant must make comments or correct shortcomings and shall fix a period of two months from the date of notification for same;
 - (c) where an object of industrial property satisfies the protection criteria, including the case mentioned in clause (b) above, the notice of results of examination of contents should include a request for the applicant to pay the fee for announcement of the certificate of protection, the fee for registration and issuance of the certificate of protection and the fee for maintenance of validity for the first year (for inventions and utility solutions).
- 16.4 Within the period for examination of contents, applicants may, on their own initiative, amend and supplement application documents and must pay fees as stipulated.

The Department of Industrial Property shall have the right to request applicants to amend and supplement documents within a fixed time period. Where an applicant fails to make the amendment and supplementation as required by the Department of Industrial Property without reasonable cause, the application shall be deemed to be withdrawn.

Amendments and supplements shall not change the nature of objects and shall not expand the scope (quantity) of protection stated in applications.

- 16.5 The time period for examination of contents of applications shall be:
- (i) eighteen (18) months for applications in respect of inventions, and nine months for applications in respect of utility solutions, from the date of receipt of the request for examination of contents if that request is filed after the date of announcement of an application, or from the date of announcement of an application if the request for examination of contents is filed prior to such date;
 - (ii) nine months for applications in respect of industrial designs and applications in respect of trademarks from the date of signing the notice of acceptance of a proper application;
 - (iii) six months for applications in respect of appellations of origin of goods from the date of signing the notice of acceptance of a proper application.

If during the process of examination of the contents of applications, an applicant takes the initiative, or is required by the Department of Industrial Property, to amend and supplement documents, the time

period for examination of contents may be extended by the time period used for the purpose of amendment and supplementation of documents.

Prior to expiry of the time period for examination of contents, the Department of Industrial property must send a notice of results of examination of contents to applicants and the person requesting examination as stipulated in clause 16.3 above.

CHAPTER 3

Transfer of Industrial Property Rights

17. Contracts for transfer of industrial property rights:

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

17.2 A contract for transfer of ownership of inventions, utility solutions, industrial designs or trademarks must include the following main contents:

- names (names and surnames) and full addresses of transferor and transferee;
- basis for transfer (certificate of protection granted to transferor or transferred to transferor);
- object to be transferred (which shall be total ownership of the whole protected quantity of the object of industrial property or of part of the protected quantity of a trademark - part of the list of goods and services);
- price of transfer;
- rights and obligations of each party including respective obligations which shall not be inconsistent with the provisions in article 40 of the Decree;
- conditions for amendment, termination and invalidation of contracts;
- resolutions of claims and disputes;
- date and place of signing;

- signatures of parties or authorized representatives of parties with full names and positions of signatories and certification of signatures.
- 17.3 A contract for transfer of the right to use inventions, utility solutions, industrial designs or trademarks ("licensing contract") must include the following contents:
- names (names and surnames) and full addresses of licence transferor and transferee;
 - basis for transfer of licence (certificate of protection granted to transferor of licence; or exclusive licensing contract);
 - scope of licence, including:
 - type of licence (exclusive/non-exclusive);
 - object of licence, determined by limits of the right to use (within protected acts of use) and limits of object of industrial property (within protected quantity of object of industrial property);
 - territorial limit (within territory of Vietnam);
 - time-limit (within duration of protection of object of industrial property);
- for secondary licences, licence scope must be within the licence scope of the corresponding primary exclusive licensing contract;
- price of licence;
 - rights and obligations of each party including respective obligations which shall not be inconsistent with the provisions in article 40 of the Decree;
 - conditions for amendment, termination and invalidation of contract;
 - resolutions of claims and disputes;
 - date and place of signing;
 - signatures of parties or authorized representatives of parties with full names and positions of signatories and certification of signatures.

- 17.4 A licensing contract shall not contain any provisions which unreasonably limit the right of the licence transferee, especially limitation provisions which do not originate from the rights of the licence transferor with respect to the object of industrial property or which do not aim to protect those rights, such as:
- provisions directly or indirectly limiting the export of products produced under the licence to territories which are not locations in which the licence transferor is the owner of the industrial property right or has the exclusive right to import the object of industrial property;
 - provisions obliging the transferee of the trademark licence to purchase all or part of the raw materials, accessories or equipment of the licence transferor or of a person appointed by the licence transferor for purposes other than to ensure the quality of goods produced by the transferee;
 - provisions prohibiting the licence transferee from improving the object of industrial property (except in the case of trademarks), obliging the licence transferee to transfer free of charge to the transferor the improvements created by the transferee, the right to file an application for industrial property protection or the industrial property rights with respect to such improvements;
 - provisions prohibiting the licence transferee from claiming against the validity of the industrial property right or against the right to transfer the licence of the licence transferor.
- 17.5 If a transfer of industrial property rights forms part of another contract, the contents of the transfer of the industrial property rights shall form a separate part from the remaining parts of the contract and must be in compliance with the provisions of this clause.

18. Approval and registration of contracts for transfer of industrial property rights:

- 18.1 In accordance with articles 38.5 and 62.5 of the Decree, all contracts for transfer of ownership or transfer of the right to use objects of industrial property shall be approved by the Minister of Science, Technology and Environment prior to the procedures for contract registration being carried out in accordance with article 42 of the Decree and clause 20 of this Circular, in the following cases:
- (i) one of the contracting parties (the transferor or transferee) is a State organization or organization with State capital contribution and the other party is an individual or non-State organization;

- (ii) the transferor is an individual, legal person or other entity of Vietnam and the transferee is a foreign individual or organization.

18.2 All contracts for transfer of ownership rights or transfer of the right to use objects of industrial property, including contracts for which procedures for approval have been carried out, shall be registered in accordance with article 42 of the Decree and clause 20 of this Circular.

19. Procedures for approval of contracts for transfer of industrial property rights:

19.1 Documentation for approval of contracts (hereinafter referred to as *approval documentation*) shall include the following documents:

- (i) three copies of request form for approval of the contract for transfer of industrial property rights, prepared in accordance with the form issued by the Department of Industrial Property with the requesting person being a State organization or the organization having State capital contribution in the case of contracts which fall within clause 18.1(i); or being the Vietnamese party in the case of contracts which fall within clause 18.1(ii);
- (ii) two originals or two copies of the contract, including appendices (if any); if the contract is made in a language other than Vietnamese, the Vietnamese translation must be included;
- (iii) the original certificate of protection (in cases of transfer of ownership with respect to objects of industrial property) or a copy of the certificate of protection (in case of transfer of the right to use objects of industrial property); where the contract to be approved is a secondary contract, a copy of the registration certificate of the corresponding exclusive primary licensing contract must be included;
- (iv) written consent of co-owners regarding the transfer of the right if the industrial property right is jointly owned; or if consensus is not reached, there must be a written statement explaining the reason for the disagreement of the remaining co-owners;
- (v) the business licence of the transferee in cases of transfer of ownership rights or the right to use trademarks;
- (vi) documents evidencing the payment of fees for contract approval;

(vii) power of attorney (if necessary).

- 19.2 The approval documentation shall be submitted to the Department of Industrial Property in accordance with provisions on filing applications (clause 10 of this Circular).

The time period for submitting the documentation for contract approval shall be sixty (60) days from the date of signing the contract. The above time period may be extended if the applicant can prove that the reason for delay is plausible.

- 19.3 The Department of Industrial Property shall have the responsibility to accept the approval documentation in accordance with the provisions on application acceptance in clause 11 of this Circular, with appropriate amendments, including the documents indicated in clause 11.2(i), such as: the declaration, the contract for transfer of industrial property rights, documents evidencing the payment of fees and any power of attorney.

- 19.4 The Department of Industrial Property shall have the responsibility to examine the approval documentation within two months from the date of receipt of such documentation in accordance with the following provisions:

- (a) Where the approval documentation is proper and the contents of the contract are in compliance with the regulations, the Department of Industrial Property shall report the result of examination of the approval documentation to the Minister of Science, Technology and Environment and request the issuance of a decision on contract approval within fifteen (15) days of receipt of the report from the Department of Industrial Property.
- (b) Where documentation has shortcomings and such shortcomings are able to be corrected (except the cases stipulated in paragraph (c) below), the Department of Industrial Property shall notify the applicant to correct such shortcomings within an appropriate time period.

The time period for the applicant to correct the shortcomings of the documentation shall not be included in the time period for consideration thereof.

- (c) In cases where the approval documentation is improper for the following reasons, the Department of Industrial Property shall request the Minister of Science, Technology and Environment to

refuse the approval of the contract for transfer of industrial property rights:

- (i) the applicant in the approval documentation does not correct the shortcomings within the time period notified by the Department of Industrial Property;
- (ii) the applicant in the approval documentation is not the person stipulated in clause 19.1(i) above;
- (iii) the transferor is not the owner of the certificate of protection (in cases of transfer of ownership of objects of industrial property); or is neither the owner of the certificate of protection nor the person to whom the exclusive licence is transferred and who is entitled to transfer a secondary licence in respect of the object of industrial property (in cases of transfer of the right to use objects of industrial property);
- (iv) the transferee does not have a business licence for the goods and services in conformity with the trademark registration certificate (in cases of transfer of the industrial property right with respect to trademarks);
- (v) the industrial property right is no longer in the period of validity for protection or the object of industrial property is under dispute;
- (vi) there are bases to confirm that the transfer will infringe the industrial property rights of a third party;
- (vii) the contents of the contract are not in compliance with the regulations on conditions restricting the transfer and/or lack the compulsory contents stipulated in article 38 of the Decree and clauses 17.2, 17.3 and 17.4 of this Circular;
- (viii) there is no term on price in the contract or the price of transfer falls outside the range between the minimum and maximum rates specified;
- (ix) the contract does not have the signatures of the transferee and transferor and/or the signatures are not duly certified;
- (x) the signatories of the contract are not authorized to so sign.

19.5 Prior to requesting refusal of the approval of the contract, the Department of Industrial Property shall inform the applicant of the results of examination of the approval documentation, the intention to refuse, and the reasons for refusing and shall stipulate a proper time period for the applicant to make comments. Where the applicant does not have any objection after the stipulated time period or where the objection is implausible, the Department of Industrial Property shall officially request the Minister of Science, Technology and Environment to refuse to approve the contract.

20. Procedures for registration of contracts for transfer of industrial property rights:

20.1 The documentation for registration of a contract for transfer of ownership (hereinafter referred to as *registration documentation*) shall consist of the following documents:

- (i) two copies of the application for registration of the contract for transfer of industrial property rights, prepared in accordance with the form issued by the Department of Industrial Property;
- (ii) two originals or two copies of the contract for transfer of ownership, including appendices (if any); if the contract is made in a language other than Vietnamese, the Vietnamese translation must be included;
- (iii) the original certificate of protection (in cases of transfer of ownership with respect to objects of industrial property); or copies of the certificate of protection (in cases of transfer of the right to use objects of industrial property). If the contract to be registered is a secondary licence contract, a registration certificate of the corresponding exclusive primary licensing contract must be included;
- (iv) written consent of co-owners to the transfer of the right if the industrial property right is jointly owned; or if consensus is not reached, there must be a written statement explaining the reason for the disagreement of the remaining co-owners;
- (v) the business licence of the transferee in cases of transfer of ownership or transfer of the right to use trademarks;
- (vi) decision on contract approval of the Minister of Science, Technology and Environment (where the contract is subject to compulsory approval);

- (vii) documents evidencing payment of the fees for registration of the contract;
- (viii) power of attorney (if necessary).

Where it is necessary to carry out the procedures for both approval and registration, the documents which have been filed in the approval documentation shall be deemed to be those of the registration documentation.

20.2 Registration documentation shall be filed and accepted in accordance with the regulations on approval documentation (clauses 19.2 and 19.3 of this Circular).

20.3 The Department of Industrial Property shall have the responsibility to examine registration documentation within a period of two months of receipt of documentation. The time period shall be fifteen (15) days for contracts which have been approved.

(a) Where the registration documentation is proper and the contents of the contract are in compliance with the regulations, the Department of Industrial Property shall issue a decision on issuance of a registration certificate of the contract for transfer of ownership with respect to objects of industrial property and a certificate of protection in cases of transfer of trademarks for part of the list of goods and services; or a registration certificate of licensing contract; and shall implement the following procedures:

- (i) to record in the National Registration Book of Industrial Property, the Registration Book of Contracts for Transfer of Objects of Industrial Property, or the Licensing Contract Registration Book, as the case may be;
- (ii) to record in the certificate of protection (in cases of transfer of ownership with respect to objects of industrial property) and to grant the certificate of protection to the transferee of the right to use trademarks for part of the list of goods and services;
- (iii) to stamp the registration seal on two copies of the contract, to deliver one copy to the applicant filing the registration documentation and retain one in the files;
- (iv) to grant the applicant filing the registration documentation with a registration certificate of the contract for transfer of

ownership with respect to objects of industrial property or a registration certificate of the licensing contract;

(v) to announce the decision on issuance of the registration certificate in the Official Gazette of Industrial Property.

(b) In cases where the shortcomings of documentation are able to be corrected (except for the cases stipulated in paragraph (c) below), the Department of Industrial Property shall notify and request the applicant to correct these shortcomings within an appropriate time period.

The time period for the applicant to correct the shortcomings of the documentation shall not be included in the stipulated time period for examination of the documentation.

(c) In cases where the registration documentation is improper for the following reasons, the Department of Industrial Property shall refuse to register the contract:

(i) The applicant in the registration documentation does not correct the shortcomings of documentation within the time period specified by the Department of Industrial Property or the corrections are unsatisfactory;

(ii) The applicant filing the registration documentation is not the transferor or transferee of such transfer contract nor the industrial property representative being authorized as stipulated;

(iii) The transferor is not the owner of the certificate of protection (in cases of transfer of ownership with respect to objects of industrial property); or is neither the owner of the certificate of protection nor the person to whom the exclusive licence is transferred and who is entitled to transfer the secondary licence for the object of industrial property (in cases of transfer of licences);

(iv) The transferee does not have a business licence for the goods or services in compliance with the registration certificate of the corresponding trademarks (in cases of transfer of industrial property rights with respect to trademarks);

(v) The industrial property right is no longer within the time period for protection or is under dispute;

- (vi) There is evidence to confirm that the transfer of the industrial property right will infringe the industrial property rights of a third party;
 - (vii) The contract has contents which are not in compliance with the regulations on conditions restricting transfer as stipulated in clause 38 of the Decree and/or lacks the compulsory contents as specified in clauses 17.2, 17.3 and 17.4 of this Circular;
 - (viii) The contract does not have the signatures of the transferee and transferor and/or the signatures are not duly certified;
 - (ix) The signatories of the contract are not authorized to sign;
 - (x) There is no decision on contract approval (where the contract is subject to compulsory approval).
- (d) Prior to officially refusing to register the contract, the Department of Industrial Property shall notify the applicant of the results of examination of registration documentation, the intention to refuse, and the reasons for refusal and shall stipulate an appropriate time period for the applicant to make comments. If the applicant does not have any objection after that stipulated time period or has implausible objections, the Department of Industrial Property shall issue the notice of refusal of registration of the contract for transfer of industrial property rights, stating clearly the reasons therefor.

21. Examination of applications for issuance of compulsory licences:

21.1 Documentation for issuance of compulsory licences shall consist of the following documents:

- (i) An application for issuance of compulsory licence, prepared in accordance with the form stipulated by the Department of Industrial Property;
- (ii) Documents evidencing the special significance for national security and defence, people's health care or environmental protection of the invention, utility solution or industrial design and the documents evidencing that the invention, utility solution or industrial design is not being used by the owner of the industrial property (or the transferee of the whole right to use such objects) without reasonable cause or is being used to an

extent which is not satisfactory to the requirements of national security and defence, people's health care or environmental protection;

- (iii) Documents evidencing the capability to use the invention, utility solution or industrial design of the applicant and the conditions deemed by the applicant as reasonable which have been set forth but have not been accepted by the owner of industrial property (or the transferee of the whole right to use the object of industrial property) without reasonable cause;
 - (iv) Documents evidencing the payment of the fee for issuance of compulsory licence;
 - (v) Power of attorney (if necessary).
- 21.2 Documentation for issuance of a compulsory licence shall be submitted to the Department of Industrial Property.
- 21.3 After acceptance of documentation for issuance of a compulsory licence, the Department of Industrial Property shall carry out the examination of documentation as stipulated in article 51.5 of the Decree. The procedures for examination of documentation for issuance of a compulsory licence shall be similar to those for approval of contracts for transfer of industrial property rights (clause 19 of this Circular).

CHAPTER 4

Dealing with International Applications in Respect of Inventions and Utility Solutions and Applications in Respect of International Registration of Trademarks

22. Procedures prior to submission to the Department of Industrial Property:

The provisions on filing applications and implementation of other related procedures at the Department of Industrial Property as stipulated in articles 15.2 and 15.3 of the Decree and clause 3 of this Circular shall also be applied to the implementation of procedures at the Department of Industrial Property for international applications in respect of inventions and utility solutions or trademarks mentioned in this Chapter.

23. Dealing with international applications in respect of inventions and utility solutions in accordance with the PCT Treaty:

23.1 Body receiving applications:

The body authorized to receive international applications in Vietnam shall be the Department of Industrial Property.

The Department of Industrial Property shall have the responsibility:

- (i) to receive international applications originating from Vietnam;
- (ii) to collect fees and transfer the corresponding fees to the International Office and the International Reference Agency as stipulated in the Treaty;
- (iii) to verify timely payment of specified fees;
- (iv) to check and deal with international applications originating from Vietnam as stipulated in the Treaty;
- (v) to determine the object to be protected: if the object to be protected in an application is a national secret, the following procedures shall not be carried out and fees shall be refunded to the applicant, except for the fees for filing and copying international applications;
- (vi) to send one set of international applications originating from Vietnam to the International Office and one copy (for reference) to the International Reference Agency;
- (vii) to send and receive correspondence from the applicant and the international agencies.

23.2 Languages:

International applications originating from Vietnam submitted to the Department of Industrial Property shall be made in English and Russian. Each application shall be made in three copies.

In cases where the number of copies is not sufficient as specified, the Department of Industrial Property shall make more copies as necessary and the applicant shall pay the fee for duplication of international applications.

23.3 International Reference Agency and International Preliminary Examination Agency:

For international applications originating from Vietnam, the competent International Reference Agencies and International Preliminary Examination Agencies shall be the Patent Agencies of Australia, Austria, Russian Federation, Sweden and Europe.

23.4 International applications appointing Vietnam:

If Vietnam is appointed in an international application, the Department of Industrial Property shall be the appointed agency. In this case, in order to enter the National Stage, within twenty one (21) months from the priority date, the applicant must submit to the Department of Industrial Property the following:

- (i) three copies of the declaration for the issuance of the certificate of exclusive right in respect of the invention or utility solution, prepared in accordance with the form issued by the Department of Industrial Property;
- (ii) three copies of the international application (where the applicant requests to enter the National Stage prior to the date of international announcement);
- (iii) three copies of the Vietnamese translation of the international application (including the description, request for protection (the original already filed, the amendment and explanatory statement in accordance with article 19 of the PCT Treaty), the summary, notes to drawings);
- (iv) the national fees.

23.5 International applications selecting Vietnam:

If Vietnam is selected in applications for international preliminary examination, the Department of Industrial Property shall be the selected agency. In such case, and if the selection of Vietnam is carried out within nineteen (19) months from the priority date, in order to enter the National Stage, within thirty one (31) months from the priority date, the applicant must submit to the Department of Industrial Property the following:

- (i) three copies of the declaration for issuance of the certificate of exclusive right in respect of the invention or utility solution,

prepared in accordance with the form issued by the Department of Industrial Property;

- (ii) three copies of the Vietnamese translation of the international application (including: the description, request for protection (the original already filed, the amendment and the explanatory statement in accordance with article 19 of the PCT Treaty), the summary, notes to drawings);
- (iii) three copies of the Vietnamese translation of the appendices to the report on international preliminary examination;
- (iv) the national fees.

23.6 Application documents for the priority right:

In order to enjoy the priority right, the applicant of an international application must submit to the International Office the necessary documents stipulated in Rule 17.1(a) of the Regulations on Implementation of the Treaty and must submit to the Department of Industrial Property three copies of the Vietnamese translations of those documents within the time period stipulated in clauses 23.4 and 23.5 above.

23.7 Amendment and supplementation of documents in the National Stage:

In accordance with Rule 51^{bis} of the Regulations on Implementation of the PCT Treaty, applicants shall submit the power of attorney, the certificate of transfer of the right to file the applications in the International Stage (if any), and so forth, within twenty four (24) months from the priority date for international applications appointing Vietnam and thirty four (34) months for international applications selecting Vietnam.

In accordance with articles 28 and 41 of the PCT Treaty, in the National Stage, the applicant may amend and supplement application documents as stipulated in clause 16.4 of this Circular.

The documents amended and supplemented which are submitted to the Department of Industrial Property by the applicant shall be made in Vietnamese in three copies.

23.8 Time to begin the National Stage:

The time of dealing with international applications appointing Vietnam or selecting Vietnam in the National Stage shall begin on the

first day of the twenty second month from the priority date if Vietnam is the appointed country, or of the thirty second month from the priority date if Vietnam is the selected country and such selection is made prior to expiry of the nineteen (19) month period from the priority date and if the applicant does not request to enter the National Stage earlier than the above period.

23.9 Examination of international applications:

International applications shall be examined with respect to form and content in accordance with the procedures stipulated for national applications.

23.10 International applications deemed to be withdrawn:

In addition to the cases of being deemed to be withdrawn as stipulated in the PCT Treaty and the Regulations on Implementation of the Treaty, international applications appointing Vietnam shall be deemed to be withdrawn where the national fee is not paid to the Department of Industrial Property or there is no Vietnamese translation after the expiry of the time periods stipulated in clauses 23.4 and 23.5 above respectively.

23.11 Fees:

The applicant in international applications originating from Vietnam must pay the fees in accordance with the rates and the procedures specified in the Regulations on Implementation of the Treaty and the Regulations of Inter-ministries of Finance and Science, Technology and Environment.

24. Making and filing applications for international registration of trademarks originating from Vietnam to foreign countries in accordance with the Madrid Agreement:

24.1 All individuals, legal persons or other entities shall have the right to file applications for international registration of trademarks in accordance with the Madrid Agreement provided that such trademarks have been registered in Vietnam.

24.2 Applications for registration:

Applications for international registration of trademarks shall be made in French in accordance with the form supplied free of charge by the Department of Industrial Property by completing the sections specified for the applicant (except those for the Department of Industrial

Property and the International Office) and enclosing samples of trademarks. Applications should indicate the member countries of the Madrid Agreement in which the applicant wants the trademark to be protected. The applicant must estimate the total fees to be paid to the International Office in accordance with the Fee Tariff printed in application forms. If the applicant is certain that the fees estimated are correct or after being notified by the Department of Industrial Property of the exact fees to be paid, the applicant must pay such fees to the International Office. In addition, the applicant must pay fees as stipulated to the Department of Industrial Property.

24.3 Body receiving applications:

Applications for international registration of trademarks shall be submitted to the International Office through the Department of Industrial Property.

The date on which the Department of Industrial Property receives applications shall be deemed to be the date of receipt of applications at the International Office if the International Office receives the applications within two months from that date.

24.4 Submission of applications to the International Office:

After applications have been submitted to the International Office, all transactions between the applicant and the International Office must be carried out through the Department of Industrial Property, including the amendment of documents, limitation of lists of products and transfer of registered rights.

25. **Dealing with applications for international registration of trademarks appointing Vietnam:**

- 25.1 After receiving notice of an application for international registration of a trademark appointing Vietnam from the International Office, the Department of Industrial Property shall examine the content of that application in the same manner as applications for trademarks filed directly with the Department of Industrial Property. Within twelve (12) months from the date on which the trademark is internationally registered, the Department of Industrial Property shall issue a conclusion on whether the trademark can be protected. If the trademark cannot be protected or is refused partially, within the above time period, the Department of Industrial Property must notify in writing to the applicant through the International Office, stating clearly the reasons therefor.

If the Department of Industrial Property does not issue the notice of refusal within the above time period, the trademark shall be accepted for protection in Vietnam.

- 25.2 Within three months from the date on which the Department of Industrial Property sends the notice of refusal, the applicant shall have the right to complain against the decision of the Department of Industrial Property. The procedures for complaining and dealing with complaints are the same as those for applications for trademarks filed directly with the Department of Industrial Property. The results of dealing with complaints shall be notified to the applicant and the International Office by the Department of Industrial Property.
- 25.3 Trademarks accepted to be protected in Vietnam in accordance with the Madrid Agreement shall be announced in the Official Gazette of Industrial Property. The scope (quantity) of protection certified in accordance with the registered contents of such trademarks shall be acknowledged by the World Intellectual Property Organization (WIPO) and certified by the Department of Industrial Property.

CHAPTER 5

Amendment of Certificates of Protection; Maintenance of Validity of Certificates of Protection for Inventions and Utility Solutions; Extensions of Validity of Certificates of Protection of Industrial Designs, Trademarks and Appellations of Origin of Goods

26. Amendment of certificates of protection:

- 26.1 The owner of a certificate of protection shall have the responsibility to notify in writing to the Department of Industrial Property all changes of the name and address of the owner of the certificate of protection.
- 26.2 The owner of a certificate of protection shall have the right to request the Department of Industrial Property to reduce the scope (quantity) of protection for an industrial design and trademark by excluding one or more alternatives of the industrial design, amending some details of the trademark without changing the nature of that trademark, or excluding some products in the list of products and services stated in the certificate of protection for trademark.
- 26.3 In order to amend the above contents, the owner of a certificate of protection shall file an application for amendment of the certificate of

protection to the Department of Industrial Property. Applications for amendments shall be made in accordance with the form stipulated by the Department of Industrial Property and must include: (i) the original certificate of protection; (ii) the document certifying the amendment of the name and address of the owner of the certificate of protection; (iii) two sets of photos or drawings of the industrial design alternatives to be excluded; (iv) ten (10) samples of the corrected trademark; (v) the document evidencing payment of the fee for amendment of the certificate of protection; (vi) the power of attorney (if necessary).

- 26.4 The Department of Industrial Property shall examine applications for amendment of certificates of protection within two months of receipt of applications. If applications are considered as proper and the amendments do not increase the scope (quantity) of protection or change the nature of the object to be protected, the Department of Industrial Property shall carry out the amendment of the certificates of protection and register and announce such amendments in the Official Gazette of Industrial Property. Conversely, the Department of Industrial Property shall notify the applicant of the refusal of amendment, indicating clearly the reasons therefor.

27. Maintenance of validity:

In order to maintain the validity of a certificate of protection for an invention or utility solution, the owner of the certificate of protection shall pay fees for the maintenance of validity within six months prior to expiry of the period of validity. The fees for maintenance of validity may be paid later than the time period stipulated above but not more than six months after expiry of the previous period of validity and the owner of the certificate of protection must pay an additional ten (10) per cent of the fees for each month of delay in payment.

28. Extension of validity:

- 28.1 In order to extend validity, within six months prior to expiry of a certificate of protection, the owner of the certificate of protection must file an application for extension to the Department of Industrial Property.

Applications for extension may be filed later than the time period stipulated above but not more than six months after expiry of the certificate of protection and the person requesting extension must pay the fee for extension plus ten (10) per cent of the fee for extension for each month of delay in payment.

- 28.2 The documentation for extension of validity of certificates of protection shall include the following documents:
- (i) two copies of the application for extension of validity of the certificate of protection, prepared in accordance with the form issued by the Department of Industrial Property;
 - (ii) the original certificate of protection;
 - (iii) the document evidencing payment of fees for extension;
 - (iv) the power of attorney (if necessary).
- 28.3 The Department of Industrial Property shall consider applications for extension within two months of receipt of applications. The Department of Industrial Property shall issue the decision on extension, certify the certificate of protection, and register and announce in the Official Gazette of Industrial Property provided that applications do not fall in the following cases:
- X applications for extension are improper or are not filed in compliance with the specified procedures;
 - X there is evidence that the owner of a certificate of trademark registration or of a certificate of the right to use an appellation of origin of goods has not used that trademark or appellation of origin of goods for the five consecutive years preceding the expiry of the certificate of protection without reasonable cause;
 - X the person requesting extension is not the owner of the certificate of protection for the trademark, appellation of origin of goods or industrial design.
- If applications fall in one of the above cases, the Department of Industrial Property shall issue a notice of refusal of extension, stating clearly the reasons therefor.

CHAPTER 6

Procedures for Issuance of Representation Licences

29. Documentation for issuance of representation licences:

29.1 Representation licences shall be issued by the Department of Industrial Property on the basis of examining documentation for issuance of representation licences stipulated in clauses 29.2 and 29.3 below. The person requesting the issuance of a representation licence must pay fees as stipulated.

29.2 Documentation for issuance of a certificate of industrial property representation service organization shall include:

- Application for issuance of a certificate of industrial property representation service organization, including the recommended list of industrial property representation persons of the organization;
- Copy of the charter and the business registration certificate;
- Copy of the decision on appointment of the leadership of the organization or the authorization of representation for the organization, which is signed by the head of the organization, of one of the members in the list recommended above;
- Fee tariff for industrial property representation services of the organization after fulfilling the procedures for registration in accordance with provisions on control of fees and charges;
- Documents evidencing payment of fees for issuance of representation licence.

The documentation for issuance of a certificate of industrial property representation service organization must be filed together with the documentation for issuance of industrial property representation cards of the individuals in the list recommended above.

29.3 Documentation for issuance of an industrial property representation card shall include:

- Applications for issuance of an industrial property representation card, including certification by the people's committee of the ward, commune or town of the permanent address of the applicant;
- Copy of university degree;

- Copy of certificate of graduation of a full-time training course in industrial property; or certification of the term of working and work performed as stipulated in article 58.1 of the Decree;
- Copy of a pass certificate of an examination on the current legislation on industrial property of Vietnam granted by the Department of Industrial Property;
- Copy of the decision on recruitment of the industrial property representation service organization;
- Documents evidencing payment of fees for filing the application.

30. Examination of documentation for issuance of representation licences:

Within one month from the date of receipt of documentation for issuance of a representation licence, the Department of Industrial Property must examine and decide whether to accept such application or not. Where applications are not accepted, the Department of Industrial Property must notify clearly the reasons therefor to the applicants. If the Department of Industrial Property accepts applications and applicants have paid the fees for issuance of representation licences, the Department of Industrial Property shall carry out the following procedures:

- to issue representation licences;
- to record the issuance of representation licences in the Book of Industrial Property Representation;
- to declare the issuance of representation licences in the Official Gazette of Industrial Property.

CHAPTER 7

Final Provisions

31. Complaints:

Upon disagreement with a decision relating to the settlement of an application, the approval and registration of a contract for transfer of industrial property rights, the examination of an application for issuance of a compulsory licence, the extension of validity of a certificate of protection, or the issuance of a representation licence, an applicant shall have the right to complain or initiate legal action in accordance with the procedures stipulated in articles 27.2, 27.3 and 27.4 of the Decree.

32. Dealing with applications filed from 1 July 1996 to the effective date of this Circular:

For applications filed from 1 July 1996 to the effective date of this Circular, the document forms stipulated in Circular 1134-SC dated 17 October 1991 of the Ministry of Science, Technology and Environment guiding the implementation of Decree 84-HDBT dated 20 March 1990 of the Council of Ministers may be used and such applications shall be dealt with in accordance with this Circular. In particular, the time period for dealing with these applications may be extended by a period equal to the period from the date of filing such applications to the effective date of this Circular.

33. Forms of documents and regulations on examination of applications:

The Director of the Department of Industrial Property shall be responsible for issuing the forms of necessary documents related to applications and the approval and registration of contracts for transfer of industrial property rights and for issuing regulations on examination of applications.

34. Implementing provisions:

This Circular shall replace the following documents of the State Committee of Science and Technology and the Ministry of Science, Technology and Environment:

- Chapters II, III, IV of Circular 1134-SC dated 17 October 1991 guiding the implementation of Decree 84-HDBT dated 20 March 1990 of the Council of Ministers;
- Circular 437-SC dated 19 March 1993 providing supplementary guidance on trademark registration;
- Circular 163-TT-SHCN dated 15 April 1994 guiding the implementation of the regulations on approval and registration of licensing contracts;
- Circular 238-TT-SHCN dated 2 May 1994 guiding filing and dealing with international applications for protection of inventions and utility solutions in accordance with the Patent Co-operation Treaty in Vietnam;
- Decision 199-QD dated 21 December 1992 promulgating the regulations on industrial property representation.

This Circular shall take effect after fifteen (15) days from the date of signing.

The Minister of Science, Technology and Environment

PHAM GIA KHIEM

8 Ministry of Planning and Investment
and
Phillips Fox

IX-612