

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No.06-2001-ND-CP

Hanoi, 1 February 2001

**DECREE**

**ON**

**AMENDMENT OF AND ADDITION TO A NUMBER OF ARTICLES OF  
DECREE 63-CP OF THE GOVERNMENT DATED 24 OCTOBER 1996  
ON INDUSTRIAL PROPERTY**

**The Government**

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

Pursuant to the *Civil Code* dated 28 October 1995 and the Resolution on Implementation of the *Civil Code* issued by Legislature IX of the National Assembly at its eighth session;

Pursuant to the *Law on Complaints and Denunciations* 09-1998-QH10 dated 2 December 1998;

In order to strengthen the full and effective protection of industrial property rights with respect to inventions, utility solutions, industrial designs, trademarks and appellations of origin of goods;

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

**Decrees:**

**Article 1**

To make the following amendments and additions to a number of articles of Decree 63-CP of the Government dated 24 October 1996 making detailed provisions on industrial property (hereinafter referred to as Decree 63-CP):

1. Article 1 of Decree 63-CP shall be amended as follows:

" Article 1 Objectives and Scope of Application:

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

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

2. Clauses 8A and 8B shall be added to article 2 of Decree 63-CP:

"8A. *Affiliated trademarks means similar trademarks registered by the same entity for the purpose of using them for products or services which are of the same kind, similar or related; and identical trademarks registered by the same entity for the purpose of using them for similar or related products or services.*

8B. *Well-known trademark means a trademark which has been continuously used for prestigious goods whereby such trademark has become widely known.*"

3. The last paragraph of clause 4 of article 4 of Decree 63-CP shall be amended as follows and the following new paragraph shall be added to the end of such article:

"▪ *Methods of disease prevention, diagnosis and treatment for human beings and animals;*

▪ *Processes of a biological nature (except for microbiological processes) for production of plants or animals."*

4. Sub-clause (f) of clause 1 of article 6 of Decree 63-CP shall be amended as follows:

"(f) *Not being identical or similar to any extent that may cause confusion with any protected trade name, or with any protected geographic instructions (including appellations of origin of goods)."*

5. Clause 3 shall be added to article 8 of Decree 63-CP:

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

6. Article 9 of Decree 63-CP shall be amended as follows and clause 3 shall be added to such article:

"Article 9 *Certificate of Protection, Registration of Appellations of Origin of Goods, Acceptance of Protection of Internationally Registered Trademarks and Recognition of Well-known Trademarks:*

1. *A certificate of protection issued by the authorised State body is the sole certificate of the State evidencing the industrial property rights of the owner who is issued with the certificate of protection or the rights*

of the author of an invention, utility solution or industrial design and certifying the degree of protection of the industrial property right.

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

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

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

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

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

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

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

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

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

*A decision on registration of an appellation of origin of goods, a decision on acceptance of protection of an internationally registered trademark or a decision on recognition of a well-known trademark issued by the authorised State body shall be the basis for evidencing*

*the relevant appellation of origin of goods or trademark protected by the State and for determining the scope of protection of such object.*

*The Department of Industrial Property under the Ministry of Science, Technology and Environment shall be the above-mentioned authorised State body."*

7. Article 10 of Decree 63-CP shall be amended as follows:

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

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

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

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

*An appellation of origin of goods shall be protected for an indefinite period calculated from the date on which the authorised State body issues a decision to register the appellation of origin of goods, except where factors appear which take away the distinctive characteristics stipulated in clause 2.(e) of article 28 of this Decree.*

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

right to use the relevant object of industrial property (licence) to other persons for a similar period.

8. Clause 1 of article 11 of Decree 63-CP shall be amended as follows:

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

9. The heading of article 13 of Decree 63-CP shall be amended as follows and clause 1 shall be added to such article:

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

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

2. Within a time-limit of three months calculated from the date of announcement of refusal to issue an exclusive patent, the application for a certificate of protection of an invention may, at the request of the applicant, be converted to an application for a certificate of protection of an utility solution. No data relating to the date of submission or the priority date of the application shall be changed. If the application for a certificate of protection of an invention is so converted, the application and verification fees paid shall not be refunded and the applicant must pay a fee for application conversion."

10. Sub-clause (d) shall be added to clause 3 of article 14 of Decree 63-CP:

"(d) *All organisations and individuals engaged in business activities within the territory in the place-name corresponding to an appellation of origin of goods, and administrative bodies responsible for management of the territory in the place-name corresponding to an appellation of origin of goods shall be entitled to submit an application for registration of the appellation of origin of goods.*"

11. Clauses 2 and 4 of article 18 of Decree 63-CP shall be amended as follows:
  - "2. All applications for a certificate of protection which are considered to be proper shall be published in the Official Gazette of Industrial Property by the Department of Industrial Property."
  - "4. The procedures and time-limits *for verification of the form, publication and verification of the contents of an application for a certificate of protection shall be provided for by the Minister of Science, Technology and Environment.*"
12. Clause 3 of article 23 of Decree 63-CP shall be amended as follows:
  - "3. If any applicant for a certificate of protection of an appellation of origin of goods satisfies the standards required for use of the appellation of origin of goods which has been registered, the Department of Industrial Property shall issue a decision on the issuance of a certificate of the right to use the appellation of origin of goods, which clearly states the name and address of the applicant to be issued with the certificate of the right to use the appellation of origin of goods; the number of the application for a certificate of protection of the appellation of origin of goods, the date of receipt of the application; the name of the industrial property representation service organisation; the products bearing the appellation of origin of goods manufactured by the person who has been issued with the certificate; and the appellation of origin of goods, the registration number, the number of the certificate."
13. Article 27 of Decree 63-CP shall be amended as follows:

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

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

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

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

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

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

*(b) Second complaints and legal proceedings:*

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

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

3. *Limitation periods for lodging first complaints shall be:*

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

*The limitation period for lodging second complaints shall be thirty (30) days calculated from the date of expiry of the limitation period for*

*resolving the complaint as stipulated in clause 4 of this article in which the first complaint has not been resolved, or calculated from the date on which a person authorised to receive second complaints receives or is aware of the decision on resolution of the first complaint.*

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

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

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

14. Sub-clause (e) of clause 2 of article 28 of Decree 63-CP shall be amended as follows:

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

15. The first paragraph of clause 2 of article 29 of Decree 63-CP shall be amended as follows:

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

16. Article 30 of Decree 63-CP shall be amended as follows and clause 2 shall be added to such article:

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

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

2. The Minister of Science, Technology and Environment shall provide procedures for extension of the validity of certificate of protection."
17. Sub-clause (a) of clause 2 of article 31 of Decree 63-CP shall be amended as follows:
- "(a) Applications for a certificate of protection are considered to be proper;"
18. Clause 2 of article 33 of Decree 63-CP shall be amended as follows:
- "2. Owners of the international registration of a trademark in accordance with the Madrid Agreement which is accepted for protection in Vietnam; *entities possessing a trademark which is recognised as the well-known trademark;*"
19. Clause 5 shall be removed from article 38 of Decree 63-CP and the clause 4 of such article shall be amended as follows:
- "4. Transfers of industrial property rights with respect to a trademark must not cause any confusion in relation to the characteristics and origin of the goods or services bearing the trademark.
- Ownership rights with respect to an affiliated trademark shall only be transferred at the same time as all the affiliated trademarks.*
- Transfers of ownership rights with respect to a well-known trademark must ensure that the prestige of such well-known trademark is maintained."*
20. Article 41 of Decree 63-CP shall be amended as follows:
- "Article 41 Price and Method of Payment for Transfer of Industrial Property Rights:
- The price and method of payment for transfer of industrial property rights shall be agreed by the two parties in accordance with the laws on technology transfer."
21. Clauses 1 and 2 of article 50 of Decree 63-CP shall be amended as follows and clause 3 shall be added to such article:
- " Article 50 Rights of Persons Making Previous Use of Inventions, Utility Solutions and Industrial Designs
1. Prior to the date of *submission* of the application for a certificate of protection of an invention, utility solution or industrial design, if any individual, legal entity or other entity has been independently making use of such invention, utility solution or industrial design, *such individual, legal entity or other entity shall be entitled to continue to*

*make the use within the scope or volume of use prior to the date of submission of the application ("the previous right to use"). The owner of the certificate of protection or owner of the object of industrial property may not request that any measure be taken or take legal action and exercise temporary rights against the individual, legal entity or other entity previously using such object of industrial property provided that such individual, legal entity or other entity does not expand the scope or volume of use as compared to the period prior to the date of submission of the application.*

2. If, after the date of *submission* of the application for a certificate of protection as stated in clause 1 of this article, the individual, legal entity or other entity expands the scope and volume of use of the object of industrial property as compared with the previous use, the expanded part shall be deemed not to be part of the previous right to use.
  3. *The person having the previous right to use may not transfer such right to other persons, except where the whole previous right to use is transferred together with the business establishment where the previous use was made."*
22. Clauses 2, 3, 6 and 8 of article 51 of Decree 63-CP shall be amended as follows:

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

*The provisions of clause 1 of article 802 of the Civil Code shall not be applicable in the period of time prior to the expiration of the period of four years from the date of submission of an application for a certificate of protection and prior to the period of three years from the date of issuance of a certificate of protection.*

*The person being compelled to carry out compulsory licensing shall have the right to request that the validity of the compulsory licensing be suspended when the circumstance resulting in such licensing are terminated and are unable to occur again, provided that such suspension of validity shall not cause any damage to the person to whom a compulsory licence is granted."*

- "3. *The Ministry of Science, Technology and Environment shall be the authorised State body considering requests for compulsory licensing, and making decisions on compulsory licensing and decisions on suspension of validity of compulsory licensing."*
- "6. *The Minister of Science, Technology and Environment must fix terms of licensing in the decision on compulsory licensing in accordance with the following provisions:*

- (a) *The compulsory licence shall be a non-exclusive licence;*
- (b) *The compulsory licence shall be limited within a scope and period which are sufficient to meet the objectives for such licensing;*
- (c) *The person to whom a compulsory licence is granted may not transfer the right to use under such licence to other persons, except where [such right] is transferred together with the business establishment using such licence, and may not grant sub-licences to other persons;*
- (d) *The person to whom a compulsory licence is granted must pay an amount corresponding to the economic value of the right to use under such licence, or equivalent to the price, to the licence grantor for transfer of the voluntary licence pursuant to a contract with the same scope and period of licence.*

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

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

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

*The provisions on procedures for complaints and resolution of complaints set out in article 27 of this Decree shall also apply to complaints lodged with the Minister of Science, Technology and Environment in accordance with the provisions of this clause, whereby the Minister of Science, Technology and Environment shall resolve first complaints.*

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

- 23 Article 52 of Decree 63-CP shall be amended as follows and clause 2 shall be added to such article:

"Article 52 *Acts not Falling under Exclusive Right of Owners of Industrial Property Rights:*

1. *Pursuant to article 803 of the Civil Code, where the acts of a third person using an invention, utility solution or industrial design do not fall under the exclusive right of the owner of industrial property rights, the owner of industrial property rights shall not request measures to be taken or take legal action against such acts pursuant to article 36 of this Decree in the following circumstances:*
  - (a) *The use was not for commercial purposes;*
  - (b) *The use of products resulted from the owner of the object of the industrial property, the person to whom a compulsory licence was granted or a prior user putting the product onto the market (including overseas markets);*
  - (c) *The use was only for the purpose of maintaining the operation of means of transportation of foreigners in transit or temporarily located in the territory of Vietnam.*
2. *The provisions of sub-clause (a) and appropriate items with respect to trademarks and appellations of origin of goods stipulated in sub-clause (b) of clause 1 of this article shall also apply to trademarks and appellations of origin of goods."*
24. Clause 3 of article 53 of Decree 63-CP shall be removed and clause 1 of such article shall be amended as follows:
  - "1. The undertaking of one of the acts with respect to a protected object of industrial property as stipulated in article 805 of the *Civil Code* and specified in article 34 of this Decree without the permission of the owner of such object by a person other than the owner of the object of industrial property or other than a person making previous use as stipulated in article 50 of this Decree, and where such acts are not stipulated in articles 51 and 52 of this Decree, shall be considered an infringement of industrial property rights.

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

    - (a) *Using an industrial design which is not substantially different to any protected industrial design;*
    - (b) *Using a sign which is identical to any protected trademark under a certificate of trademark registration or under international registration for goods or services which are similar or related to goods or services included in the registered list attached to such trademark and/or using a sign which is similar to such trademark for goods or services of the same kind, or for goods or services which are similar or related to the goods or services included in the registered list attached*

*to such trademark if such use is able to cause confusion in relation to the origin of goods;*

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

25. Article 55 of Decree 63-CP shall be amended as follows:

"Article 55 Definitions:

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

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

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

*Industrial property representative* refers to an industrial property representation service organisation and/or industrial property representation person."

26. Article 58 of Decree 63-CP shall be amended as follows:

"Article 58 Conditions for Business and Practice of Industrial Property Representation:

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

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

- X Being a Vietnamese citizen having full capacity for civil acts;
- X Residing in Vietnam;
- X Having an undergraduate degree with a major in law or a technological science;

- X Having a certificate indicating that he or she has attended an official course on industrial property; or having directly been involved in professional legal matters related to industrial property for at least five consecutive years; or having directly evaluated applications for industrial property rights at a national or international industrial property body for at least five consecutive years;
- X Having a certificate indicating that he or she has successfully passed the examination on the legislation on industrial property rights of Vietnam currently in force which has been granted by the Department of Industrial Property and is within its period of validity;
- X Not working for a State body or organization which is not an enterprise.

2. *Conditions for business of industrial property representation services:*

Industrial property representation service organizations must satisfy the following criteria:

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

27. Article 59 of Decree 63-CP shall be amended as follows and clause 2 shall be added to such article:

"Article 59 *Procedures for Granting of Cards of Industrial Property Representation Person and Issuance of Certificates of Business Registration of Industrial Property Representation Services:*

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

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

2. *The authorised State body making business registration in accordance with the laws on enterprises shall be the authorised body issuing certificate of business registration of industrial property representation services to organisations which satisfy all the criteria stipulated in clause 2 of article 58 of this Decree. The above-mentioned body shall have the right to seek an opinion of the Department of Industrial Property about the satisfaction of the conditions for industrial property representation service business by enterprises applying for registration.*

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

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

28. Article 61 of Decree 63-CP shall be amended as follows:

"Article 61 *Withdrawal of Cards of Industrial Property Representation Person or Certificates of Business Registration of Industrial Property Representation Services:*

1. *Conditions for withdrawal of Cards of Industrial Property Representation Person or Certificates of Business Registration of Industrial Property Representation Services:*

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

- X Where the cardholder ceases industrial property representation activities;
- X Where the cardholder fails to satisfy all standards referred to in clause 1 of article 58 of this Decree;
- X Where the cardholder commits a serious breach during the practice of industrial property representation activities which causes damage to the legitimate interests of the represented person or other persons or causes damage to the prestige of State bodies and/or the State.

- (b) *In the following cases, the Department of Industrial Property shall notify the authorised body issuing certificates of business*

*registration in order to revoke certificates of business registration of industrial property representation services or remove the sector of industrial property representation service business (if the organisation still engages in other fields of business):*

X Where organizations fail to satisfy all criteria referred to in clause 2 of article 58 of this Decree;

X Where organizations breach provisions of the law, especially provisions of this Chapter.

*The authorised body must notify the withdrawal of the certificate of business registration of industrial property presentation services to the Department of Industrial Property so that the Department of Industrial Property shall remove the name of the organisation from whom the certificate of business registration is withdrawn from the national register.*

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

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

29. The heading of Chapter 7 of Decree 63-CP shall be amended as follows:

"Chapter 7: State Administration of Industrial Property Activities."

30. Article 62 of Decree 63-CP shall be replaced by new article 62:

"Article 62 *State Administration of Industrial Property Activities:*

1. *The Government shall assume unified State administration of industrial property activities.*

2. *State administration of industrial property activities shall include the following:*

(a) *Promulgating legal instruments, policies, strategies, master planning and plans for development of industrial property activities;*

(b) *Carrying out procedures for establishment of industrial property rights;*

(c) *Protecting lawful interests of the State, organisations and individuals in the industrial property field;*

- (d) *Organising the implementation of the laws and policies on industrial property;*
- (dd) *Organising communicating activities in relation to industrial property;*
- (e) *Managing industrial property presentation and consultancy services;*
- (g) *Training and building a staff force conducting industrial property activities;*
- (h) *Carrying out international co-operation on industrial property;*
- (i) *Guiding, inspecting and examining the implementation of policies, compliance with the laws on industrial property;*
- (k) *Resolving complaints and denunciations, and dealing with offences of the laws on industrial property."*

31. Article 62 and article 66 of Decree 63-CP shall be merged into new article 65:

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

1. The establishment and implementation of industrial property rights shall not violate the interests of the State.
2. Protected objects of industrial property which are owned by a State organization or enterprise or an organization or enterprise having State capital contributed to a joint venture shall be assets of the State. The above organizations or enterprises shall have the responsibility to protect, maintain and develop the prestige and value of such assets.
3. Confidential inventions and utility solutions:
  - (a) Inventions or utility solutions of Vietnam which are related to national defence and security or which have a special economic value shall be considered confidential inventions or utility solutions.
  - (b) Authors, owners of objects of industrial property and concerned persons engaged in the preparation, submission and verification of applications for a certificate of protection and the use of confidential inventions and utility solutions shall be responsible for maintaining the confidentiality of such inventions and utility solutions in accordance with provisions on protection of national secrets.
4. Appellations of origin of goods of Vietnam are national assets. The right to use an appellation of origin of goods shall belong to the owner of a certificate of the right to use the appellation of origin of goods and shall not be permitted to be transferred to any other people in any form.
5. Only the owner of an object of industrial property shall be permitted to provide instructions that his/her/its products are protected or subject to his/her/its exclusive right, including instructions in the form of signs applied to products or used for advertising or during commercial transactions, and only during the period of protection.

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

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

32. Clause 1, the first paragraph of clause 2, sub-clause (e) of clause 2 and sub-clause (a) of clause 3 of article 63 of Decree 63-CP shall be amended as follows:

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

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

"(e) To examine the professional knowledge of, to issue *Cards of Industrial Property Representation Person* to, and to exercise professional and technical management of industrial property representation service organizations;"

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

33. Clauses 2 and 3 of article 64 of Decree 63-CP shall be amended as follows:

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

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

34. Article 65 of Decree 63-CP shall be converted into article 66 which shall be included in Chapter 7 and amended as follows:

"Article 65 Dealing with Administrative Breaches in Relation to Industrial Property:

*Administrative breaches in relation to industrial property shall be dealt with in accordance with the provisions of Decree 12-1999-ND-CP of the Government dated 6 March 1999 on Penalties for Administrative Breaches in Relation to Industrial Property and other relevant laws."*

35. The heading of Chapter 8 of Decree 63-CP shall be amended as follows:

"Chapter 8: Final Provisions"

36. Article 69 of Decree 63-CP shall be amended as follows:

"Article 69 Grandfather Clauses:

1. Applications for protection on the basis of the *Ordinance on Protection of Industrial Property* dated 28 January 1989 which were filed with the Department of Industrial Property prior to 1 July 1996, including applications sent by post and bearing a postal seal dated prior to that date, shall continue to be processed in accordance with the above Ordinance.
2. Certificates of protection issued on the basis of the 1981 *Regulations on Initiatives and Inventions*, 1988 *Regulations on Utility Solutions*, 1982 *Regulations on Trademarks*, 1988 *Regulations on Industrial Designs* or *Ordinance on Protection of Industrial Property* dated 28 January 1989 shall be valid until the expiry of their duration of validity. Upon expiry of above, the procedures for extension [*of certificates*] stipulated in cause 2 of article 30 of this Decree shall apply and certificates of registration of trademarks and certificates of industrial designs shall be further extended if the owner of the certificate of protection so requests. All exclusive patents in respect of inventions whose duration of validity is less than twenty (20) years shall be extended up until the expiry of the period of twenty (20) years calculated from the date of submission of the proper application.
3. *All rights and obligations under such certificates of protection (including certificates of protection issued under the Ordinance on Protection of Industrial Property dated 28 January 1989) and the procedures for maintenance, extension, amendment, transfer and resolution of disputes relating to such certificates of protection shall be applied in accordance with this Decree.*
4. *Outstanding applications for a certificate of protection filed from 1 July 1996 shall be resolved in accordance with this Decree."*

**Article 2 Implementation Provisions**

1. This Decree shall be of full force and effect fifteen (15) days from the date of signing.
2. The Minister of Science, Technology and Environment shall be responsible for providing guidelines for implementation of this Decree.
3. Ministers, heads of ministerial equivalent bodies and Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government  
Prime Minister  
PHAN VAN KHAI