

THE MINISTRY OF SCIENCE AND TECHNOLOGY

CIRCULAR NO. 30/2003/TT-BKHCHN OF NOVEMBER 5, 2003 GUIDING THE CARRYING OUT OF THE PROCEDURES FOR ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS OVER INVENTIONS/UTILITY SOLUTIONS

Pursuant to the Government Decree No.54/2003/ND-CP of May 19, 2003 defining the functions, tasks, powers and organizational structure of Science and Technology;

Pursuant to the Government Decree No.63/CP of October 24, 1996 detailing industrial property, which has been supplemented and amended under the Government Decree No. 06/2001/ND-CP of February 1,2001;

The Ministry of Science and Technology hereby guides the carrying out of the procedures for compiling, filing and examining the applications for the grant of protection titles; the procedures for granting, amending, extending, suspending, and canceling the validity of the protection titles of inventions or utility solutions

Chapter 1 GENERAL PROVISIONS

1. Interpretation of terms

1.1. The following words and phrases in this Circular are construed as follows:

- a) “The Decree” is issued to refer to the Government’s Decree No. 63/CP of October 24, 1996 specifying the industrial property, which has been supplemented and amended under the Government’s Decree No.06/2001/ND-CP of February 1, 2001;
- b) “Invention application” is used to refer to an application for the grant of an invention patent;
- c) “Utility solution application” is used to refer to an application for the grant of a utility solution patent;
- d) “Application” is used to refer to an invention or utility solution application;
- e) “International application” means an application for international registration of an invention or utility solution, filed under the patent cooperation treaty signed in Washington in 1970, then amended in 1984 (hereinafter referred to as the PCT for short);
- f) “Applicant” means an organization or individual (hereafter referred to as the subject) under whose name the application is filed;
- g) “Invention/utility solution registration procedures” are understood as procedures for establishment of industrial property rights to inventions/utility solutions and other related procedures.

1.2. Other words and phrases are construed according to the Decree.

2. Certification of documents

2.1 Certification of the originals of documents

In the course of carrying out the invention/ utility solution registration procedures, all originals of the transaction documents must be certified by the very subjects under whose names the documents are compiled according to the following regulations:

- a) If the subjects under whose names the documents are compiled are individuals, there must be the signatures together with the full names of the subject or of the competent representatives who sign on behalf of the subjects;
- b) If the subjects under whose names the documents are compiled are organizations which are compulsory to use seals, the signatures of the competent representatives of such subjects must be affixed with such seals.

2.2. Certification of copies

- a) Documents being copies made in any form of copying must be certified as true copies of the originals according to the provisions of this Point 2.2.b if they are to be used as official documents in the process of carrying out the procedures for registration of inventions/ utility solutions.
- b) Documents shall be accepted as true copies of the originals if there is on such copies the certification of one of the following agencies: The public notaries, the People's Committees or competent agencies, the subjects (all of them) under whose names the original documents are compiled or their authorized persons. If a copy contains many pages, the certification must be made on every page or its pages must be affixed with overlapping stamps.

2.3. Certification of translations

- a) The Vietnamese translations of documents must be certified as textual translations of the originals under provisions of this Point 2.3.b if they are to be used as official documents in the process of carrying out the invention/ utility solution registration procedures
- b) The certification of translations may be made in any of the following ways:
 - Notarization;
 - Certification by the subjects (all of them) under whose names the documents are compiled or their authorized persons;
 - Acknowledgement by the very competent agencies using such translations in the process of carrying out the related procedures.

3. Persons carrying out the invention/utility solution registration procedures on behalf of the subjects

3.1. Only those who are defined at Points 3.2 and 3.3 of this Circular may carry out the procedures for registration of inventions/utility solutions on behalf of the subjects before the National Office of Intellectual Property and other competent agencies.

The National Office of Intellectual Property and competent agencies shall be only permitted to conduct transactions with the above-said persons and such transactions shall be considered official ones with the concerned subjects.

3.2. For the subjects entitled to file their applications and carry out the related procedures prescribed in Clauses 2 and 3.a, Article 15 of the Decree, the following persons may, on behalf of the subjects, carry out the invention/utility solution registration procedures before the National Office of Intellectual Property and other competent agencies:

- a) The very individuals or their representatives at law (for the subjects being individuals);
- b) The subjects' representatives at law; individuals being members of the subjects who are authorized by the subjects' representatives at law to represent; the head of the subjects' representatives offices or branches, who are authorized by the subjects' representatives at law to represent (for the subjects being legal persons or other subjects);
- c) The heads of the Vietnam-based representatives offices of the foreign subjects, who are authorized by such subjects to represent; the representatives at law of the enterprises which are established in Vietnam and have the 100% of investment capital owned by the foreign subjects, who are authorized by such subjects to represent;
- d) The persons who meet one of the conditions prescribed at Points 3.2.a, 3.2.b and 3.2.c are among the individuals or the legal persons or other subjects if the subjects comprise many individuals, legal persons or other subjects, and if such persons are authorized by all individuals, legal persons or other subjects to represent.

3.3. For the subjects that are only permitted to file applications and carry out the related procedures through the industrial property representation service organizations prescribed in Clause 3.b, Article 15 of the Decree and all other subjects carrying out the above-said procedures through these organizations, only the representatives at law or authorized representatives of the industrial property representation service organizations, who have the subjects' authorization letters, may perform the jobs stated at Point 3.1 of this Circular.

4. Authorization to carry out invention/utility solution registration procedures

4.1. The authorization and the undertaking of authorization to carry out the invention/utility solution registration procedures must comply with the Civil Code's provisions on civil contracts and authorization contracts and the provisions of this Circular.

4.2. All cases of authorization to carry out the invention/ utility solution registration procedures must be made in writing (authorization letters) covering the following major contents:

- a) The full names and full addresses of the authorizers;
- b) The full names and full addresses of the authorized;
- c) The scope of authorization (jobs to be performed by the authorized on behalf of the authorizers);

- d) The date of issuance of the authorization letters;
- e) The signatures and/or stamps of the issuers of the authorization letters;
- f) The authorization time limits.

The authorization letters which do not state the authorization time limits shall be regarded as indefinitely valid and only cease to be invalid when the authorizers declare to terminate the authorization.

4.3. The authorized parties must be individuals permitted to carry out the invention/utility solution registration procedures prescribed at Point 3.2 of this Circular, or the industrial property representation service organizations.

4.4. When carrying out the invention/utility solution registration procedures under authorization, the authorized parties must submit the original authorization letters. Any changes in the authorization scope and the termination of authorization ahead of time must be notified in writing to the National Office of Intellectual Property and competent agencies and they shall be only effective as from the date on which these agencies receive such notices.

4.5. If the authorization letters state the authorization scope embracing many jobs related to independent procedures and the original ones have been filed with the National Office of Intellectual Property, when carrying out subsequent procedures, the authorized parties must precisely state the serial numbers and the date of filing of the dossiers containing such authorization letters.

CHAPTER II APPLICATION AND HANDLING THEREOF

Section 1 APPLICATIONS

5. Requirements on the formality of applications

5.1. The formality of applications must meet the following requirements:

- a) The applications' documents must be in Vietnamese, except for documents which may be presented in other languages as prescribed at Points 5.2 and 5.3 of this Circular;
- b) The applications documents must be presented vertically (particularly, drawings, plans, charts and tables may be represented horizontally) on only one side of paper sheets of size A4 (210mm x297mm), leaving four margins of 20mm wide each at four sides, except for supporting materials whose sources are not intended for inclusion in the applications;

Each page of the invention/ utility solution description statements (hereinafter referred to as descriptions for short) prescribed at Point 6.2.b of this Circular may have only 450 single words at most.

- c) For documents required to be made according to set forms, such forms must be used and filed in appropriate section;
- d) If a document contains many pages, each page must be numbered with Arabic numerals;
- e) All documents must be typewritten or printed in hard-to-fade ink clearly, cleanly, without erasure and correction;
- f) The terms used in the applications must be common ones; any signs, units of measurement and electronic fonts used therein must comply with Vietnamese standards;
- g) The applications may be enclosed with supporting materials being things that carry electronic data constituting part or whole of the applications' documents, and presented according to the regulations of the National Office of Intellectual Property on the document form.

5.2 The following documents may be in languages other than Vietnamese, but must be translated into Vietnamese:

- a) Authorization letters;
- b) Document certifying the lawful application filing right if the applicants enjoy other persons' application right (inheritance certificates, application-filing right transfers certificates or agreements, including the transfer of the filed applications); the job assignment contracts or labor contracts...);
- c) Documents proving the grounds for enjoying the priority right (certification by the application-receiving agencies of the applications' copies/first applications; certificates of exhibition display... Papers on the transfer of the priority right if such right is transferred from other persons).

5.3 The following documents may be in languages other than Vietnamese, but they must be translated into Vietnamese if so requested by the National Office of Intellectual Property:

- a) Copies of the first applications to prove the grounds for enjoying the priority right;
- b) Other documents in support of the applications.

6. Requirements on the contents of applications

6.1 The applications must ensure unity as prescribed in Clause 2, Article 11 of the Decree. An application's unity is considered ensured if the application:

- a) Seeks protection for single object; or
- b) Seeks protection for a group of technically related objects expressing a single inventive idea in the following cases:

- One object used to make (manufacture, create, prepare) the other object (for example, an object or a substance and the method of creating (preparing) the whole or part of the article or substance);
- One object used to implement the other object (for example, a method and an article for implementing the whole or one step of the method);
- One object used to use the other object (for example, a method and a substance used for the method; a method or an article and a part thereof; using an article or a substance according to a new function and the method of using it according to this function);
- The objects have the same kind and same function to ensure the achievement of the same results (plans for carrying out technical solutions).

6.2 An application must contain the following documents:

- a) The declaration requesting the grant of the invention/ utility solution patent, made according to a set form;
- b) The description, including the description section, the claim, drawings, plans, calculations...(if needed to further clarify the nature of the technical solution described in the description section);
- c) The abstract of the invention/ utility solution (hereinafter referred to as the abstract for short);
- d) The authorization letters (in case of filing applications via representatives);
- e) The copy of the first application or applications or documents certifying the exhibition display if it is requested in the application to enjoy the priority right in accordance with international agreements;
- f) Vouchers on the payment of the application filing fee, the application publication fee, and the fee for request the priority right (if so requesting), the charge for substantive examination (if so requesting), the charge for classification of the invention/ utility solution (if the applicant has not yet done this).

6.3 All documents prescribed at Point 6.2 of this Circular must be filed simultaneously. Particularly, the following documents may be filed later within 3 months from the date of filing of the applications:

- a) The Vietnamese translations of the documents prescribed at point 6.2.b and 6.2.c, if the applications already contain the English versions of the documents;
- b) The documents prescribed at point 6.2.d of this Circular, including their Vietnamese translations, if the applications already contains the copies thereof;
- c) The documents prescribed at Point 6.2.e of this Circular, including their Vietnamese translations, if so requested by the National Office of Intellectual Property.

6.4 Where there are grounds (information, evidences) to doubt the authenticity of the information in the applications, the National Office of Intellectual Property may request the applicants to submit, within one month after being requested, the documents verifying such information, especially the documents certifying the lawful application-filing right if the applicants receive

such right from other persons (inheritance right certificates, application-filing right transfer certificates or agreements; job assignment contracts or labor contracts...); the results of testing drugs on humans, animals or plants mentioned in the description sections (when the objects in need of protection are pharmaceuticals to be used for human, animal or plant).

6.5. The declaration should state the classification indexes of the technical solutions to be protected according to the table of international patent classification (according to the Strasbourg Agreement). If the applicants have not yet classified them or have classified incorrectly, the National Office of Intellectual Property shall do the classification and the applicant must pay the classification service charge.

6.6. The description section of a description must disclose fully the nature of the technical solution in need of protection. It must contain sufficient information so that any person with average knowledge about the relevant technical field may base himself/herself on this information to carry out such technical solution.

The description section must make clear the novelty and inventive step (if the objects in need of protection are patents) and the applicability of the technical solutions in need of protection.

The description sections should cover the following contents:

- a) The names of the objects to be protected (hereinafter referred to as the objects for short) or of the principal objects,
- b) The field where the objects are used or related,
- c) Technical solutions in the above-said field at the time of filing the applications (known similar objects), if any,
- d) The nature of objects, clearly stating the signs (characteristics) constituting the object, pointing out to new signs (characteristics) as compared to the known similar technical solutions,
- e) The brief descriptions of the accompanying drawings (if any),
- f) The detailed descriptions of plans for implementing the objects,
- g) Examples of implementation of the objects, if necessary
- h) Benefits (effects) likely to be achieved when the objects are used, if necessary,

6.7 The claims are used to define the scope (volume) of protection of the inventions/utility solutions. They must be concise, clear and consistent with the description sections and drawings, and comply with the following regulations:

- a) They must be fully illustrated in the description sections, meaning that they must be reflected by enumerating the signs stated in the description sections, which are necessary and sufficient for identifying the objects, achieving the set objectives and distinguishing the objects from other known ones;

b) The claims must not make reference to the description sections and drawings, except for references to parts which cannot be precisely described in words, such as nucleotide and amine acid sequences, interference charts, state diagrams;

c) The claims must be written in a complete sentence and should (optionally) be presented in two parts: “the restriction part” and “the distinction part” of which:

- The “restriction part” covers the name of the object and the object’s signs which are identical to those of latest known objects, and is linked with the “distinction part” by the phrase “differ in” or “be characterized by” or similar words;
- The “distinction part” includes the signs of the object, which make the object distinctive from latest known objects and are combined with the signs described in the “restriction part” to constitute the object requested for protection.

d) The claims may include one or many points. Multi-point claims may be used:

- To present a to be protected object, with the first point (called the independent point) and the subsequent point (or points) being used to supplement, clarify and develop the independent point (called dependent point); or
- To present a group of to be protected objects, with a number of independent points, each presenting one object to be protected in the group, and possibly having one dependent point (or points).

e) The points of the claims must be consecutively numbered with Arabic numerals followed by a stop.

f) Multi-point claims used to present a group of objects must meet the following requirements:

- Independent points, which express separate objects, must not include references to the other points of the claims, except where such references help avoid the full repetition of the contents of other points;
- Dependent points must be presented immediately after the independent points on which they depend.

g) If an application contains drawings, the signs mentioned in the claims may be accompanied with indication figures, which must be put in brackets.

6.8. The abstracts are used to announce briefly the nature of the inventions/utility solutions (no more than 150 single words). They must disclose the principal contents on the nature of the technical solutions for the information purpose. The abstracts may contain typical drawings and/or formulas.

6.9. The description sections, drawings, claims abstracts and other documents constituting the application must meet the detailed form and content requirements prescribed in the Regulations on applications and the process of carrying out the invention/utility solution registration procedures, promulgated by the Ministry of Science and Technology.

6.10 Requirements on the applications for inventions/utility solutions related to biotechnology.

a) Apart from the general requirements from on the invention/utility solution description sections prescribed at Point 6.6, for the applications for inventions/utility solutions regarding genetic sequences or a part thereof, the description sections must also contain the list of genetic sequences presented according to the WIPO ST.25 Standard, section 2(ii) (the Standard on the presentation of the list of nucleotide sequences and amine acid sequences in the invention applications).

b) The National Office of Intellectual Property may request the applicants to submit electronic information carriers (for example, floppy diskettes, optics discs...), readable with common electronic means, which contain the nucleotide sequences and amine acid sequences identical with the sequences listed in the description sections.

c) Particularly for inventions/ utility solutions on (or related to) biological materials, which cannot be described or fully described to the extent that people with average knowledge about the biotechnology field can carry out, such inventions/ utility solutions can be considered fully disclosed if:

- The samples of biological materials have been deposited to competent storing agencies prescribed at Point 6.11 of this Circular no later than the date of the filing of the applications;
- The description sections clearly state that necessary information on the features of the biological materials, which the applicant may have; and
- The declarations clearly state the biological material-storing agencies and the deposit numbers of the biological material samples already deposited, granted by the storing agencies, and documents certifying that such information has been submitted to National Office of Intellectual Property within 16 months after the priority date or no later than the date of filing the request for early publication of the applications (if any)

d) Where the applicants are other than the depositors or biological materials, the declarations must clearly state the names and addresses of the depositors and documents certifying the lawful use of the biological materials must be submitted to the National Office of the Intellectual Property within 16 months after the priority date or no later than the date of filing the requests for the early publication of the applications (if any).

6.11. Deposit of biological materials

a) The purpose of depositing the biological material samples is to serve the process of examining the contents of the applications related to biological materials.

b) The biological material samples must be submitted to the agencies competent to store biological materials no later than the date of filing the applications related to such biological materials.

c) The agencies storing biological materials (designated by the Ministry of Science and Technology) shall receive and store the biological materials submitted by the invention/utility solution applicants according to the Regulation on storage of biological materials, promulgated by the Ministry of Science and Technology.

Section 2

FILING AND RECEIVING OF APPLICATIONS

7. Filing of Applications

Applications may be filed with the National Office of Intellectual Property or any other application-receiving places set up by the National Office of Intellectual Property. Applications may also be sent via registered mail to the above-aid application-receiving place.

8. Receiving of applications

8.1 Upon receiving the applications, the National Office of Intellectual Property shall have to:

- a) Check the list of documents inscribed in the declarations;
- b) Take note of disparities between the list of documents inscribed in the declarations and the quantities of documents actually contained in the applications;
- c) Preliminarily examine the applications so as to conclude whether to receive the applications or not under Point 8.2 of this Circular, then affix a stamp certifying the date of filing the applications on the declarations, if agreeing to receive the applications;
- d) Issue to the applicants the receipts of the applications already affixed with the stamp certifying the date of filing the applications and recorded with the result of checking the list of documents, which are signed by, and inscribed with the full names of, the application-receiving officials.

8.2 The National Office of Intellectual Property shall not receive applications which lack one of the following compulsory documents:

- a) The declarations, which must contain the names and addresses of the applicants;
- b) The descriptions, including the claims;
- c) Voucher on the payment of the application-filing fee.

8.3 Where the applications are rejected, within 15 days after receiving such applications, the National Office of Intellectual Property must send to the applicants the notices on its refusal to receive their applications, clearly stating the reasons therefor and fix a two month time limit (starting from the date of notification) for the applicants to correct any defects.

If, within the fixed time limit, the applicant file fully the documents prescribed at Point 8.2 of this Circular, their applications shall be deemed as being received on the date of fully filing such documents.

For the rejected applications, the National Office of Intellectual Property shall not have to return to the applicants the applications' documents but must refund the paid charges and fees according to the procedures for refunding of charges and fees prescribed in this Circular.

Section 3
FORMALITY EXAMINATION OF APPLICATIONS

9. Purposes and contents of formality examination

Formality examination of applications means examining the compliance with the regulations on the form of applications, then making conclusions on whether the applications are considered valid or not.

Valid applications shall be further considered. Invalid applications shall be rejected (not further considered)

10. Valid applications

10.1. Applications shall be considered valid if they do not fall into one of the following cases:

- a) Applications are made in languages other than Vietnamese, except for the cases prescribed at Points 5.2 and 5.3 of this Circular;
- b) The declarations contain insufficient information on the authors, the applicants, the representatives, have no signatures and/or stamps of the applicants or their representatives;
- c) There are grounds to confirm that the applicants are not entitled to file the applications;
- d) The applications are filed in contravention of the provisions of Article 15 of the Decree;
- e) The descriptions or the abstracts are written in English but the applicants fail to provide their Vietnamese translations within the time limit prescribed at Point 5.3 of this Circular;
- f) The authorization letters are not submitted within the time limit prescribed at Point 6.3 of this Circular;
- g) The applications contain the defects listed at Point 11 of this Circular, which affect their validity, but the applicants, though being requested to correct such defects by the National Office of Intellectual Property, fail to correct or correct them unsatisfactorily;
- h) There are grounds to promptly confirm that the objects stated in the applications are obviously not entitled to protection by the State under the provisions of Article 787 of the Civil Code and Clause 4, Article 4 of the Decree.

10.2. For the applications involving many objects, if they fall into the cases mentioned at Points 10.1.h, 11.a and 11.d of this Circular while the defects are not related to all the objects in the applications, the application shall be regarded as partially invalid (for defected objects); for other objects, the applications shall still be regarded as valid.

11. Handling of the applications ‘defects at the stage of formality examination

11.1 The applications’ defects to be corrected at the stage of formality examination:

- a) The application fail to ensure unity;
- b) The applications fail to meet the requirements on the presentation form;
- c) Information on the applicants in different documents is inconsistent, erased or not certified according to regulations;
- d) The application filing fee, application publication fee and technical solution classification charge (if done by the National Office of Intellectual Property) have not yet been paid.

11.2 The National Office of Intellectual Property shall notify the applicants of the defects prescribed at Point 11.1 and, within 2 months as from the date of notification, the applicants must correct such defects.

12. Determination of the dates of filing applications

12.1. The date of filing an application is the date on which the application arrives at the National Office of Intellectual Property, which is recorded in the receipt stamp affixed on the declaration.

12.2. For international applications designating and/or selecting Vietnam and satisfying the requirements set forth at Point 58 or 59, the filing date is the date of filing the International application.

13 Determination of the priority date

13.1. If the applications contain no requests to enjoy the priority right or they do but such requests are not accepted by the National Office of Intellectual Property, the priority date shall be the date of filing the applications.

13.2. If the applications contain requests to enjoy the priority right, the priority date (or priority dates) is the date stated in such requests and accepted by the National Office of Intellectual Property.

14. Notices on acceptance of applications

If the applications are considered valid, the National Office of Intellectual Property shall have to send to the applicants the notices on acceptance of valid applications, which must clearly state the names and addresses of the applicants; the names of the industrial property representation service organizations (if the applications are filed through such organizations); the names of the objects stated in the applications; the dates of filing the applications and the serial numbers and priority date of the applications. If the requests to enjoy the priority right are rejected, the reason therefor must be clearly stated

15. Refusal of applications

If the applications are considered invalid, the National Office of Intellectual Property shall send to the applicants the notices on its intention to refuse the applications, clearly stating the defects rendering the applications invalid and fixing a 2-month time limit starting from the date of notification for the applicants to give their opinions on such intention.

Where the applicants give no feedback or give implausible opinions on the intention to refuse the applications, the National Office of Intellectual Property shall issue formal notices on its refusing the applications and refund the paid fees and charges related to the post- formality examination jobs as so requested by the applicants.

16. Time limit for formality examination of applications

16.1. The time limit for formality examination is one month counting from the date of filing the applications. Particularly for the applications with to be additionally-furbished documents prescribed at Point 6.3 of this Circular, the time limit for formality examination is one month counting from the date on which such additional documents are fully furbished.

16.2. If, in the course of formality examination of applications, the applicants, either on their own initiatives or at the request of the National Office of Intellectual Property, amend and/or supplement their documents, the time limit for formality examination may be prolonged for another 15 days. If the applications are amended and/or supplemented at the request of the National Office of Intellectual Property, the time limit for the applicants to amend and/or supplement their applications shall not be counted into the time limit for formality examination.

Section 4 PUBLICATION OF APPLICATIONS

17. Publication of valid applications

Applications and international applications, which have been accepted as valid, shall be published by the National Office of Intellectual Property on the Industrial property Gazette. The applicants shall have to pay an application publication fee.

18. Time limit for publication of applications

18.1. The applications shall be published in the 19th month counting from the priority date, except for the cases prescribed at Points 18.2, 18.3 and 18.4 of this Circular.

18.2. The applications requesting early publication shall be published in the second month counting from the date the National Office of Intellectual Property receives such requests or from the date the applications are accepted as valid, depending on which date is later.

18.3. For applications requesting in writing the substantive examination before the date the applications are accepted as valid, they shall be published in the second month counting from the date they are accepted as valid.

18.4. For applications requesting in writing the substantive examination after the date the applications are accepted as valid and before the expiry of the 18 month time limit starting from the priority date, they shall be published in the second month counting from the date the National Office of Intellectual Property receives the request for formality examination.

18.5. International applications shall be published in the second month counting from the date they are accepted as valid.

19. The contents of publication of applications

Information pertaining to the valid applications to be published in the Gazette includes: all information on the valid applications, written in the notices on acceptance of valid applications; information related to the application transfer, splitting...; the abstracts, one or some drawings (if any).

20. Access to detailed information on valid applications

Everyone may have access to information on the nature of the objects stated in the applications or request the National Office of Intellectual Property to supply such information provided that he/she must pay a charge as prescribed.

Section 5 SUBSTANTIVE EXAMINATION OF APPLICATIONS

21. Request for substantive examination of inventions, utility solutions

21.1. Within 42 months counting from the priority date of invention applications or 36 months from the priority date of utility solution applications, the applicants or any third parties may request the National Office of Intellectual Property to examine the contents of the relevant inventions or utility solutions. If plausible reasons can be given, the time limit for substantive examination may be extended but must not exceed 6 months

The requesters for substantive examination of inventions or utility solutions must pay a search charge and a substantive examination charge according to regulations. If the substantive examination requests are filed later than the prescribed time limit, the requesters must pay additionally an extension (late filing) charge. If the search charge and the substantive examination charge are not paid, the substantive examination requests filed with the National Office of Intellectual Property shall be considered invalid.

21.2. If filed after the publication of the applications, the requests for substantive examination of inventions or utility solutions shall be published in the Industrial Property Gazette in the second month counting from the date of receipt of the written examination requests and the applicants shall be notified thereof.

If filed before the publication of the applications, the requests for substantive examination of inventions or utility solutions shall be published in the Industrial Property Gazette together with the relevant applications according to Points 18.3 and 18.4 of this Circular.

21.3. Unless the substantive examination requests are inscribed by the applicants themselves in the declarations, the requests for substantive examination of inventions or utility solutions must be made in writing according to the a set form and enclosed with vouchers for the payment of the search charge and the substantive examination charge.

21.4. If no substantive examination requests are filed within the time limit prescribed at Point 21.1 of this Circular, the applications shall be considered withdrawn upon the expiry of such time limit.

22. Purposes of the substantive examination

The purposes of the substantive examination are to evaluate the patentability of the objects stated in the applications according to the protection criteria, and to determine the corresponding scope (volume) of protection.

23. Use of the results of information search in the course of substantive examination

23.1. When conducting the substantive examination, the National Office of Intellectual Property must search information in the minimum information sources prescribed at Point 34.2 of this Circular in order to make comparison and evaluate the objects stated in the applications according to the protection criteria.

23.2. In the course of substantive examination of the applications involving the priority right, the National Office of Intellectual Property may use the results of examination of information search and the results of examination of the relevant applications already filed abroad. The applicants may furnish the National Office of Intellectual Property with the following documents in service of the substantive examination:

- a) The results of information search or examination of the applications already filed abroad for the objects stated in the applications;
- b) The copies of the patents or other protection titles granted on the basis of the applications filed abroad for the objects stated in the applications;
- c) Documents related to the technical conditions of the objects stated in the applications, which are furnished to the applicants by the foreign patent agencies.

24. Consideration of opinions of third parties

In the course of substantive examination of applications, the National Office of Intellectual Property must take into consideration the third parties' opinions (if any) for or against the grant of the protection titles. The National Office of Intellectual Property must notify such opinion holders whether their opinions are accepted or not; if not, clearly state the reason therefor.

25. Request for correction of form-related defects, explanation of contents of applications

25.1. In the course of substantive examination of applications the National Office of Intellectual Property may request the applicants to expound the contents of their applications' documents or correct defects related to their applications' form. If the applicants fail to satisfy such requests, their applications shall be considered withdrawn and not be further considered.

25.2. The National Office of Intellectual Property must not request the applicants to supply information beyond the scope of nature of the objects stated in their applications, and, in particular, must not request the applicants to supply information which they want to keep secret.

25.3. Any amendment or supplementation of the applications' documents must be effected by the applicants themselves. The National Office of Intellectual Property shall not be allowed to directly effect such amendment or supplementation.

26. Suspension of substantive examination

26.1 The substantive examination shall be suspended in the following cases:

a) The applications fail to clearly reflect the nature of the objects: Documents related to the nature of the objects, such as the descriptions or claims, still lack information to the extent that it is impossible to determine the contents of the nature of the objects or contain unclear, impractical or unspecific information on the nature of the objects, or such documents are so inconsistent that it is impossible to identify the objects.

b) The objects are not met the requirements for the grant of invention/utility solution patents or are objects not entitled to protection by the State under the provisions of Article 787 of the Civil Code and Clause 4, Article 4 of the Decree;

c) The applicants request the suspension of the substantive examination or declare to withdraw or disclaim their applications

26.2. The National Office of Intellectual Property must notify the suspension of the substantive examination and the reasons therefor according to the procedures similar to those for notification of the substantive examination results (except for cases where the suspension is effected at the applicants' request).

27. Appeals to the suspension; restoration of substantive examination

27.1. The applicants may appeal to the substantive examination suspension and the National Office of Intellectual Property shall have to deal with such appeals according to the procedures prescribed in Section 3, Chapter 4 of this Circular.

27.2. If the settlement of the applicants' appeals determines that such appeals are plausible, the National Office of Intellectual Property shall restore the substantive examination of the applications. In this case, the National Office of Intellectual Property shall not be allowed to prolong the time limit for substantive examination.

28. Contents and procedures for evaluation of objects under protection criteria

28.1. The evaluation of the objects under the protection criteria covers determining whether or not the objects stated in the applications are suitable for the requirements for the grant of invention/utility solution patents, and, if they are suitable, evaluating them one after another according to the protection criteria.

28.2. The objects shall be evaluated one by one according to the protection criteria (if the applications contain many objects but still ensure unity) and each shall be evaluated according to each and every criterion specified in Chapter 3 of this Circular.

The evaluation shall be conducted according to each point stated in the claims.

28.3. The evaluation of each object shall be completed if:

- a) Reasons are found to conclude that the objects fail to meet any of the protection criteria.
- b) No reason is found to conclude that the objects fail to meet any of the protection criteria.

In case a), the substantive examination shall end with the conclusion that the objects fail to meet the protection criteria.

In case b), the substantive examination shall end with the conclusion that the objects meet the protection criteria.

29. Notification of the substantive examination results

29.1. The National Office of Intellectual Property must notify the results of substantive examination of the applications to the applicants and the substantive examination requesters, clearly stating whether or not the objects meet the protection criteria.

29.2. If the objects stated in the applications do not meet the requirements for the grant of invention/utility solution patents or if they do but fail to meet the protection criteria, the notices on the substantive examination results must clearly state the intention to refuse to grant the protection titles and the reasons therefor, and also fix a 2-month time limit starting from the date of notification for the applicants to give their opinions; if the scope (volume) of protection is too wide, the notices must clearly state the reasons therefor and the intention to narrow it.

29.3. If the objects meet the protection criteria but the applications still contains defects, the notices on the substantive examination results must clearly state such defects and fix a 2-month time limit starting from the date of notification for the applicants to give their opinions or correct the defects, and also notify the intention to refuse to grant the protection titles in cases the applicants fail to correct the defects satisfactorily or give implausible protests.

29.4. If the objects meet the protection criteria or, in the cases stated at Points 29.2 and 29.3 of this Circular, the applicants have narrowed the scope (volume) of protection to make the objects meet the protection criteria, or they have corrected the defects satisfactorily and/or given plausible protests, the notices on the substantive examination results (or the second notices on the substantive examination results for the cases stated at Points 29.2 and 29.3 of this Circular) must fix a time limit for the applicants to pay the charge for publication of the protection titles, the fee for registration and grant of the protection titles and the fee for maintenance of the validity thereof in the first year. Such time limit is 2 months counting from the date of notification.

29.5. If, within the fixed time limit, the applicants fail to correct defects or correct them unsatisfactorily and/or give no protests or give implausible protests, the National Office of Intellectual Property shall formally refuse to grant the protection titles to them.

If the notices on the substantive examination results fix the time limit for payment of charges and fees prescribed at Point 29.4 of this Circular but the applicants fail to pay the publication fee, the registration fee and the fee for the grant of the protection titles within such fixed time limit, the National Office of Intellectual Property shall refuse to grant the protection titles. If, within the

fixed time limit, the applicants only pay the publication fee, the registration fee and the fee for the grant of the protection titles but do not pay the fee for maintenance of the validity in the first year, the protection titles shall still be granted but the validity thereof shall be suspended under Article 28.2b of the Decree.

29.6. For the applications involving many objects, if only some of such objects fall into the case stated at Point 29.5 of this Circular, the refusal to grant the protection titles shall only pertain to such objects (the protection titles shall still be granted to the remaining objects). To be granted the protection titles, the applicants must amend the descriptions of the other remaining objects which meet the requirements set forth at Point 6 of this Circular.

30. Time limit for substantive examination

30.1. The time limit for substantive examination of the applications is 12 months counting from the date of receipt of the substantive examination requests (if such requests are filed after the date of publication of the applications) or from the date of publication of the applications (if such requests are filed before the date of publication of the applications).

30.2. If, in the course of the substantive examination of the applications, the applicants, on their own initiative or at the request of the National Office of Intellectual Property, amend and/or supplement documents, the time limit for substantive examination may be prolonged for another month. In case of amendment and/or supplementation of documents at the request of the National Office of Intellectual Property, the time limit for the applicants to amend and/or supplement documents shall not be counted into the time limit for substantive examination.

30.3. Before the expiry of the time limit for substantive examination, the National Office of Intellectual Property must send the notices on the substantive examination results to the applicants and the substantive examination requesters according to the provisions of Point 29 of this Circular.

Section 6 AMENDMENT OF APPLICATIONS

31. Amendment, supplementation, splitting, transfer and conversion of the applications

31.1. Before the National Office of Intellectual Property issues the notices on its refusal of the applications, the notices on its refusal to grant the protection titles or the decisions to grant the protection titles, the applicants may, on their own initiatives or at the request of National Office of Intellectual Property, amend and/or supplement their applications' documents, including splitting their applications (splitting one or some technical solutions in the invention/utility solution applications into a new application or many new applications, called split applications).

The applicants must submit the documents with amended contents (for replacing the unamended ones) and the written explanations on the amended contents compared with the old ones, and pay a fee according to regulations.

31.2. The amendment and/or supplementation of the applications must neither expand the scope (volume) of protection beyond the contents disclosed in the descriptions nor change the nature of the objects stated in the applications and must ensure the unity of the applications. If the

amendment entails the expansion of the scope (volume) of protection or a change in the nature of the objects, the applicants must file new applications and carry out the procedures from the beginning.

31.3. The split applications may retain the date of filing/priority date(s) of the original applications. For each split application, the application-filing fee and all other charges and fees must be paid if they are not yet paid for the original applications and for the procedures carried out independently therefrom. The split applications shall be handled according to the procedures applicable to new ones but not be published if the splitting thereof is effected after the publication of the original applications. The date of filing the requests for splitting applications shall be regarded as the date of amendment and/or supplementation of the original applications in order to count the examination time limit for the original applications. The original applications (after being split) shall be further handled according to common procedures and the applicants must pay a fee for amendment and/or supplementation thereof.

31.4. The applicants may request the recording of their names and addresses as well as the change of applicants (in case of application transfer, transfer of the right over applications on account of inheritance, merger, splitting or separation of legal persons, under court judgments...). Such requests must be made in writing and requesters must pay a fee according to regulations. A written request may ask for the recording of changes which are related to many applications and have the same content to be recorded, provided that the applicants pay a fee according to the number of related applications.

31.5. In case of conversion of invention applications into utility solution ones or vice versa under Article 13 of the Decree, the procedures not yet carried out for the original applications shall continue to be processed for the converted ones. The date of conversion of the applications shall be regarded as that of amendment and/or supplementation of the applications in order to count the time limit for examination of the converted applications.

The requests for converting invention applications into utility solution ones under Clause 2, Article 13 of the Decree shall be accepted in the case of refusal to grant invention patents on the grounds that the technical solutions are not inventive.

Chapter III

EVALUATION OF OBJECTS ACCORDING TO PROTECTION CRITERIA

32. Evaluation of the satisfaction by the objects stated in the applications of the requirements for the grant of invention/utility solution patents

32.1. The objects stated in the applications shall be considered as not meeting the requirements for the grant of invention/utility solution patents if they are not technical solutions or do not involve the use of a technical solution.

32.2. Technical solutions – objects entitled to protection of invention/utility solutions

a) Technical solutions – objects to be protected in the name of invention/utility solutions are a necessary and sufficient assemblage of information on the technical modes and/or technical means to solve a given subject matter.

b) Technical solutions can and only can take one of the following forms:

- Technical solutions in physical forms (tools, machinery, equipment, accessories, electric circuits...), expressed as an assemblage of information for identifying a man-made product characterized by the structural signs (characteristics), which has the function (utility) of serving as a means to satisfy a certain human need.
- Technical solutions in material forms (materials, substances, food, pharmaceuticals...), expressed as an assemblage of information for identifying a man-made product characterized by the presence signs (characteristics), percentages and state of its components, which has the function (utility) of serving a means to satisfy a certain human need;
- Technical solutions in biological material forms (genres, genetically modified plants, animals...), expressed as an assemblage of information on the product containing hereditary information modified due to human intervention and capable of reproduction.
- Technical solutions in the form of processes (technological processes, diagnosis predicting, examining, handling methods...), expressed as an assemblage of information for identifying a mode of performing a specific process or job characterized by the signs (characteristics) regarding the order, conditions, measures and means of performing the involved movements, aimed at achieving a certain objective.

c) Technical solutions which only differ in their functions (utilities) or use purposes shall be also regarded as different ones.

d) The objects stated in the applications shall not be regarded as technical solutions in the following cases:

- The objects stated in the applications are just ideas or intentions, simply raising the subject matters, but are not solutions thereto, failing to answer the questions “how” and/or “by what means?”;
- The subject matters raised to be settled are not technical matters and cannot be solved with technical modes (for example, assorted rules; games; mathematical or physic laws, organizational, managerial, training methods and systems; linguistic systems; information arrangement methods; territorial zoning plans; product’s appearances merely of aesthetic value...);
- Products are created or governed by the nature, not created by man.

33. Evaluation of the applicability of technical solutions

33.1. Under Clause 3, Article 4 of the Decree, a technical solution is considered applicable if it can, on the basis of information on its nature stated in the description, be performed with the obtained result as stated in the description.

33.2. A technical solution stated in the application shall be considered “performable” if:

a) Information on its nature together with instructions relating to necessary technical conditions are presented in a manner explicit and full to the extent that people with average knowledge about the relevant technical field may create, manufacture and/or use, exploit and/or perform such solution.

b) The creation, manufacture, use, exploitation or performance of the above-mentioned solution can be repeated with the same results like the results stated in the description.

33.3. The technical solutions shall be considered inapplicable in the following cases:

a) The nature of the objects or instructions for the performance of the objects run counter to the fundamental scientific principles (for example, non-compliance with the principle of energy preservation, etc);

b) The objects comprise elements/components which are not technically interrelated or cannot be interconnected (linked, bound, interdependent...);

c) The objects contain internal contradictions;

d) Instructions on the objects may be performed only in a limited number of times (but not repeatedly);

e) In order to perform the solutions, the performers must possess special skills which cannot be taught or instructed to other persons;

f) The results obtained from different times of performance are not identical;

g) The obtained results are different from the results stated in the application;

h) There are no or insufficient most important instructions for performing the solutions;

i) For other plausible reasons.

34. Evaluation of novelty of technical solutions

34.1. A technical solution shall be considered novel if meeting the conditions prescribed in Clause 1, Article 4 of the Decree.

34.2. Compulsory minimum information sources:

a) In order to evaluate the novelty of the technical solutions stated in the applications, at least information in the following compulsory sources must be searched (but the search is not limited to such minimum sources):

- All other applications which have been received by the National Office of Intellectual Property, have the same classification indexes as those of the objects stated in the applications – up the grade classification indexes (the third –class indexes) and have the priority date earlier than that of the applications, excluding applications which have not been or will not be published;
- The invention applications and/or patents published/granted by other organizations or nations within 25 years before the priority date of the applications, which are preserved in the patent database available at the National Office of Intellectual Property, with the search scope as prescribed in the above paragraph;

b) In necessary and possible cases, the search may be extended to scientific reports, reports on the results of research programs, subjects... in the same technical field, which have been published and preserved at the National Center for Scientific and Technological Information and Documents.

34.3. Search purposes; search reports

a) The purposes of information search are to find out technical solutions of a nature similar or identical to the technical solutions stated in the applications, of which:

- Two technical solutions are identical when all of their basic signs (characteristics) are identical or similar (interchangeable);
- Two technical solutions are similar when most of their basic signs (characteristics) are identical or similar (interchangeable);
- “technical solutions for comparison” are technical solutions which are identical or most similar to those stated in the applications.

b) The information search results must be reflected in the search reports, which clearly state the field and scope of the search and the findings within such scope (a list of found solutions for comparison, clearly pointing out the identical signs, information sources, the dates of publication of relevant information) and the names of the report makers (searchers).

34.4. Conclusion on the novelty of technical solutions

a) In order to evaluate the novelty of the technical solutions stated in the applications, the basic signs (characteristics) of such technical solutions must be compared with the basic signs of the technical solutions for comparison found in the course of information search, of which:

The basic signs of a technical solution are characteristics of its function, utility, structure, connection, composition...together with other basic signs to form a necessary and sufficient assemblage for determining the nature (content) of the object (including its function and utility);

The basic signs of the technical solutions stated in the applications, in invention patents are presented in the requests for protection of inventions/utility solutions. The basic signs of the technical solutions stated in other documents are presented and discovered in descriptive documents or actual presentation forms of the technical solutions.

b) Corresponding to a point in the claims, the technical solutions stated in the applications shall be considered novel as compared to the world technical level if:

- No technical solutions for comparison are found in the course of information search; or
- technical solutions for comparison are found but the technical solutions stated in the applications contain at least one basic sign not present in the technical solutions for comparison (and such sign is called the distinctive basic sign).

35. Evaluation of the inventive step of technical solutions

35.1. The technical solutions stated in the applications shall be considered inventive if meeting the conditions prescribed in Clause 2, Article 4 of the Decree. The evaluation of the inventive

step of the technical solutions stated in the applications shall comply with the provisions of this Point.

35.2. Compulsory minimum information sources

When evaluating the inventive step of a technical solution, at least information in the compulsory minimum information sources must be searched (but the search is not limited to such sources) as prescribed at Point 34.2 of this Circular (excluding the applications not yet published by the priority date of the applications).

35.3. Evaluation of the inventive step

a) The evaluation of the inventive step of the technical solutions stated in the applications is conducted by assessing the distinctive basic sign/signs stated in the claims in order to make conclusion that:

- Whether or not the distinctive basic sign/signs are considered disclosed in the compulsory minimum information sources, and
- Whether or not the distinctive assemblage/basic signs are considered obvious.

b) Corresponding to a point in the claim, the technical solutions shall be considered inventive if the incorporation of the distinctive basic signs in the assemblage of basic signs of the technical solutions is the result of creative activity but not the obvious result of common knowledge in the relevant technical field.

c) In the following cases (but not just in these cases), corresponding to a point in the claims, the technical solutions shall be considered non-inventive:

- The assemblage of distinctive basic signs is obvious (any person with average knowledge about the relevant field can know that in order to perform a given function or to achieve a given objective, it is inevitable to use such assemblage and, vice versa, the use of such assemblage of basic signs will inevitably achieve the corresponding objective or perform the corresponding function);
- The assemblage/distinctive basic signs have been disclosed in the identical or similar forms in a/some certain technical solutions already known in the compulsory minimum information sources;
- The utility solutions are simple combinations of known utility solutions with their functions, objectives and effects being also the simple combinations of the functions, objectives and effects of each of the known technical solutions.

d) At this Point:

- Two signs shall be considered identical if they are of the same nature;
- Two signs shall be considered similar if they are of similar nature, have the same objectives and the modes of achieving such objectives are basically alike.

36. Conclusion on the patentability of technical solutions; determination of the scope (volume) of protection

If there are grounds to confirm that the technical solutions stated in the applications fail to meet at least one of the protection criteria, the technical solutions shall be considered inpatentable and the National Office of Intellectual Property refuse to grant the invention/utility solution patents. On the contrary, the technical solutions shall be considered patentable and the National Office of Intellectual Property agree to grant the invention/utility solution patents with the corresponding protection scope (volume) determined in the claims.

Chapter IV GRANT, REGISTRATION, APPEAL, SUSPENSION, CANCELLATION OF VALIDITY OF PROTECTION TITLE

Section 1 GRANT, RE-GRANT OF PROTECTION TITLE AND DUPLICATES THEREOF

37. Grant of protection titles

37.1. Within 10 days after the applicants pay fully and on time the charges and fees described at Point 29.4, the National Office of Intellectual Property shall carry out the procedures for granting the protection titles under the provisions of Articles 23 and 26 of the Decree.

After being granted the protection titles, if finding any mistakes, the owners thereof may request the National Office of Intellectual Property to correct such protection titles. If mistakes are caused by the applicants, the protection title owners must pay an amendment and/or supplementation charge. If mistakes are caused by the National Office of Intellectual Property, the protection title owners shall not have to pay such charge. The above-said correction must not alter the nature, objects and/or scope (volume) of protection.

37.2. As from the dates the National Office of Intellectual Property issues decisions to grant the protection titles, the applicants must not transfer their applications to others. If the application transfer contracts have been signed between the applicants and other persons but the related procedures have not yet been carried out at the National Office of Intellectual Property, such contracts must be transformed into invention/utility solution ownership transfer contracts according to the newly recognized protection titles.

38. Right to request the grant or re-grant of duplicates of protection titles; the re-grant of protection titles

38.1. In cases where the industrial property rights belong to co-ownership, the co-owners who are not granted by the National Office of Intellectual Property the protection titles under Clause 3, Article 26 of the Decree may file applications for the grant of duplicates thereof with the National Office of Intellectual Property, provided that they must pay the fee therefor.

38.2. The industrial property owners who have been granted the protection titles (including duplicates thereof) may file applications for the re-grant of the protection title and/or duplicates thereof with the National Office of Intellectual Property, provided that they must pay a fee therefor in the following cases:

a) The protection titles or duplicates thereof are lost, on the condition that plausible reasons are given;

b) The protection titles or duplicates thereof are damaged (so torn, dirty, fading...that they are unusable), on the condition that the damaged protection titles or duplicates thereof must be returned.

39. Dossiers of application for the grant or re-grant of duplicates of protection titles; the re-grant of protection titles

The dossiers of application for the grant or re-grant of duplicates of protection titles or the re-grant of protection titles comprise the following documents:

a) The declarations requesting the grant or re-grant of duplicates of protection titles or re-grant of protection titles (made according to a set form);

b) The written explanations on the reasons for the loss of the protection titles or duplicates thereof; or the damaged ones (in case of application for the re-grant of the protection titles or duplicates thereof);

c) The authorization letters (in case of filing the applications through representatives);

d) Vouchers on the payment of the fee for the grant of the protection titles or the duplicates thereof.

40. Handling of dossiers of application for the grant or re-grant of duplicates of protection titles, the re-grant of protection titles

40.1. The National Office of Intellectual Property must consider the dossiers of application for the grant or re-grant of duplicates of protection titles or the re-grant of protection titles within one month after the date of receipt thereof. If the dossiers comply with the provisions at Point 39 of this Circular, it shall issue decisions to grant or re-grant the duplicates of the protection titles or to re-grant the protection titles and record such in the registration section of the corresponding protection titles in the national register.

40.2. The contents of the duplicates of protection titles shall reflect fully the information of such protection titles. The contents of the re-granted versions of the protection titles or duplicates thereof shall reflect fully information of the protection titles or duplicates thereof granted for the first time together with the indication of “duplicate” or “re-granted version”.

40.3. If the dossiers fail to comply with the provisions at Point 39 of the Circular, the National Office of Intellectual Property shall issue notices on its refusal to grant the duplicates or to re-grant the protection titles, clearly stating the reasons therefor.

Section 2. National Registration, Publication of decisions to grant protection titles

41. National register of inventions/utility solutions

41.1. The national register of inventions/utility solutions constitutes the official and public database, fully containing information on the legal status of the State’s established industrial property rights over inventions/utility solutions.

41.2. Registration of inventions or registration of utility solutions includes the items corresponding to each protection title, each covering:

a) Information on the protection titles (serial numbers, dates of the grant of the protection titles; names of the protected objects; the protection scope (volume), and valid duration; the names and addresses of the protection title owners, the full names of the authors.

b) Information on the applications for the grant of the protection titles (the serial numbers and the dates of filing of the applications, their priority dates, the names of the industrial property representation service organizations (if any));

c) All information on the amendments of the protection titles, the status of validity of the protection titles (validity maintenance, suspension, cancellation; validity restoration); transfer of ownership, transfer of the rights to use inventions/utility solutions; the serial numbers, dates of grant and the grantees or re-grantees of the duplicates of the protection titles or the re-grantees of the protection titles.

41.3. The registration shall be made and preserved by the National Office of Intellectual Property in the paper and electronic forms or other means. Every person may search the electronic registration (if any) or request the National Office of Intellectual Property to grant the copies thereof (extracted copies of the registration items). The requesters for the grant of registration copies must pay a charge therefor.

42. Publication of decisions to grant protection titles

All granted protection titles must be published by the National Office of Intellectual Property in the Industrial Property Gazette in the second months as from the dates of issuance of decisions. The applicants must pay a publication fee.

Information to be published includes information in the relevant decisions; the abstracts, one or several photos or drawings (if any).

Section 3. Appeals to the procedures for the grant of protection titles

43. Persons entitled to appeal, objects and statute of limitations of appeals

43.1. The persons entitled to appeal prescribed in Clause 1, Article 27 of the Decree, within the statute of limitations prescribed in Clause 3, Article 27 of the Decree, shall be entitled to carry out the procedures for complaining about the National Office of Intellectual Property's notices on official refusal and decisions related to the registration of inventions/utility solutions.

43.2. The statute of limitations prescribed in Clause 3, Article 27 of the Decree applicable in accordance with Article 31 of the Law on Appeals and Denunciations is 90 days counting from the date the persons entitled to lodge appeals receive or know the National Office of Intellectual Property's notices or decisions on its refusal to accept their applications, the grant or refusal to grant protection titles.

44. Dossiers of appeal

44.1. General requirements

The appeal dossiers must meet the requirements on their form prescribed at Points from 5.1.a to 5.1.e of this Circular. Each appeal dossier shall touch upon a complained decision or notice. It may touch upon many decisions or notices if they share the same contents and complaining arguments, provided that the complainants must pay the prescribed appeal charge for each complained decision or notice.

44.2. A appeal dossier must comprise:

- a) The appeal declaration, made according to a set form;
- b) The copy of the appealed decision or notice;
- c) The copy of the decision on settling the first time appeal (for second time appeals);
- d) Evidences supporting the complaining arguments (if necessary);
- e) The authorization letters (in case of filing applications through representatives);
- f) The voucher on the payment of the appeal charge.

44.3. Evidences are documents (proofs) or kind (material evidences) used to prove and clarify the complaining arguments.

Evidences must satisfy the following requirements:

- a) Evidences may be documents in foreign languages provided that they are accompanied with their Vietnamese translations if it is so requested by the persons competent to settle the appeals;
- b) Where evidences are documents signed by individuals or organizations having no seals or compiled under the names of foreign individuals and/or organizations, the signatures thereon must be certified by public notary offices or competent authorities.
- c) Where evidences are information-carrying objects (publication, video tapes...), their origin, circulation and publication times must, on a case-by-case basic, be clearly stated or the origin and publication time of information carried on such objects must be clearly stated.
- d) Materials evidences must be accompanied with documents clearly describing their characteristics directly related to the contents of the appeals.

45. Responsibilities of complainants

The complainants must be honest in supplying evidence and bear responsibility for the consequences of the supply of untruthful evidences.

46. Withdrawal of appeal dossiers

46.1. At any point of time the complainants may send written notifications on withdrawing their appeal dossiers. If the withdrawal of appeal dossiers are effected by the industrial property representation organizations, the right to withdraw written appeals must be clearly inscribed by the complainants in the authorization letters.

46.2. Withdrawn dossiers shall be regarded as not filed. The complainants shall not be returned the dossiers as well as the paid appeal charges.

47. Processing of appeal dossiers

47.1. Within 10 days after receiving the appeal dossiers, the persons competent to settle appeals must examine them against the form requirements and issue written notices to the appeals on whether such dossiers are to be processed or not, stating the date of processing the dossiers or clearly stating reasons for not processing them.

47.2. The appeal dossiers shall not be processed in the following cases:

- a) The complainants do not have the right to complain;
- b) The appeal dossiers are filed later than the prescribed statute of limitations;
- c) The appeal dossiers fail to meet the requirements prescribed at Point 46 of this Circular.

48. The involved parties

48.1. For the processed appeal dossiers, the persons competent to settle appeals shall issue written notices on the appeals' contents to those who have directly related rights and interests (the "involved parties"), and fix a time limit for them to give their opinions. Such time limit is 2 months as from the date of issuance of such notices.

48.2. The involved parties may furnish information and/or evidences justifying their arguments.

48.3. If, by the expiry of the above-said time limit, the involved parties give no opinions, the appeals shall be settled on the basic of the opinions of the complainants.

49. Appeal-settling decisions

Basing themselves on the arguments and evidences given by the complainants and the involved parties, the persons competent to settle appeals shall have to issue appeal-settling decisions within the time limit for settling appeals prescribed in Clause 4, Article 27 of the Decree.

Before issuing the appeal-settling decisions, the persons competent to settle appeals must notify the complainants and the involved parties of the arguments and evidences of the other parties, which have been used to settle the appeals as well as their intention to settle the appeals and fix a 2 month time limit starting from the date of issuance of such notices for the parties to give their opinions.

The time for the complainants and the involved parties to furnish their arguments and evidences as requested by the persons competent to settle appeals shall be regarded as the time for

amending and supplementing the dossiers and not be counted into the time limit for settling appeals.

50. Effect of appeal-settling decisions

Any industrial property procedures dependant on the appeal settlement results shall only be carried out on the basis of:

- a) Decisions settling the first-time appeals, if the complainants do not lodge second time appeals or initiate administrative lawsuits; or
- b) Decisions settling second time appeals or court ruling if the complainants lodge second time appeals or initiate administrative lawsuits.

SECTION 4 SUSPENSION, CANCELLATION OF VALIDITY OF PROTECTION TITLES

51. Right to request the suspension or cancellation of the validity of protection titles

During the valid term of the protection titles, any person may request the suspension or cancellation of the validity of such protection titles under the provisions of Articles 28 and 29 of the Decree according to the order and procedures prescribed in this Section.

52. Dossiers requesting the suspension/cancellation of the validity of protection titles

52.1. Dossiers requesting the suspension/cancellation of the validity of the protection titles must satisfy the requirements on their form prescribed at Points from 5.1.a to 5.1.e of this Circular.

52.2. A dossier may request the suspension/cancellation of the validity of many protection titles if it is based on the same argument, provided that the requesters must pay the prescribed fee for each protection title.

52.3. A dossier requesting the suspension/cancellation of a protection title must comprise:

- a) The declaration requesting the suspension/cancellation of the validity of a protection title, made according to a set form;
- b) Evidences (if necessary);
- c) The authorization letters (in case of filing the applications through representatives);
- d) Voucher on the payment of the fee.

53. Handling of dossiers requesting the suspension/cancellation of the validity of protection titles

53.1. The dossiers requesting the suspension/cancellation of the validity of protection titles shall be handled in the order of settling written appeals prescribed at Points 47, 48, 49 and 50 of this Circular.

53.2. If disagreeing with the results of the handling of the dossiers requesting the suspension/cancellation of the validity of protection titles by the National Office of Intellectual Property, the requester and/or the involved parties shall be entitled to lodge appeals about the related decisions or notices according to the procedures prescribed at Points 47, 48, 49 and 50 of this Circular.

53.3. The contents of suspension/cancellation of the validity of protection titles shall be published in the Industrial Property Gazette and recorded in the national register of inventions/utility solutions.

53.4. If the requesters for validity suspension are owners of the protection titles, the National Office of Intellectual Property shall only consider whether or not such suspension would affect the interests of the third parties (whether or not exist the still effective licensing contracts for the related objects) without handling the dossiers according to the procedures prescribed at Points 53.1. and 53.2 of this Circular.

Chapter V

INTERNATIONAL INVENTION/UTILITY SOLUTION APPLICATIONS

54. Procedures to be carried out before the National Office of Intellectual Property

The provisions on the filing of applications and the carrying out of the other related procedures before the National Office of Intellectual Property prescribed in Clauses 2 and 3, Article 15 of the Decree and Point 3 of this Circular shall also apply to the carrying out of procedures before the National Office of Intellectual Property with regard to international invention/utility solution applications.

55. Application-receiving agency

The agency competent to receive international applications in Vietnam is the National Office of Intellectual Property.

The National Office of Intellectual Property shall have the responsibilities:

- a) To receive international applications of Vietnamese origin;
- b) To collect fees and transfer corresponding fee amounts to the International Bureau and International Searching Authorities according to the PCT provisions;
- c) To examine whether such prescribed fees have been paid on schedule;
- d) To examine and process international applications of Vietnamese origin according to the PCT provisions;
- e) To determine the objects requested for protection; if the applications' objects requested for protection are classified as national secrets, not to proceed to performing the following steps and the relevant fees shall be refunded to the applicants:

- f) To send one copy (dossier copy) of the international applications of Vietnamese origin to the International Bureau and one copy (the search copy) to the International Searching Authorities;
- g) To send and receive mails of the applicants and from international agencies.

56. Languages

International applications of Vietnamese origin filed with the National Office of Intellectual Property must be in English or Russian.

57. International Searching Authorities and International Preliminary Examination Authorities

For international applications of Vietnamese origin, the competent International Searching Authorities and International Preliminary Examination Authorities are Patent, Industrial Property or Intellectual Property offices of Australia, Austria, the Russian Federation, Sweden, the Republic of Korea and the European Patent Office.

58. International applications designating Vietnam

If the international applications designate Vietnam, the National Office of Intellectual Property shall be the designed agency. In this case, in order to enter the national stage, within 31 months as from the priority date, the applicants must submit to the National Office of Intellectual Property:

- a) The declarations requesting the grant of invention/utility solution patents, made according to a set form;
- b) The copies of the international applications (in cases where the applicants request to enter the national stage before the international publication date);
- c) The Vietnamese translations of the international applications: the descriptions, including the description sections, the claims, notes of drawings and the abstracts (the published versions or the original versions filed for the first time, if the applications are not published yet, and the amendments and the written explanations thereon, if the PCT applications have been amended under Article 19 of the PCT);
- d) The amended descriptions and abstracts (in case there are amendments stated at Point 58.c of this Circular);
- e) National charges and fees.

59. International applications selecting Vietnam

If the applications for international preliminary examination select Vietnam, the National Office of Intellectual Property shall be the selected agency. In this case, if the selection of Vietnam is conducted within a time limit of 19 months as from the priority date, in order to enter the national stage, within 31 months as from the priority date, the applicants must file with the National Office of Intellectual Property:

- a) The declarations requesting for the grant of the invention/utility solution patents, made according to a set form;
- b) The Vietnamese translations of the international applications: the descriptions, including the description sections, the claims, notes of drawings and the abstracts (the published versions or the original versions filed for the first time, if the applications are not published yet, and the amendments and the written explanations thereon, if the international applications have been amended under Article 19 and/or Article 34.2 of the PCT);
- c) The amended descriptions and abstracts (in cases there are amendments stated at Point 59.b of this Circular);
- d) The Vietnamese translations of the appendices to the international preliminary examination reports (when there are requests for substantive examination of the applications);
- e) National charges and fee.

60. Requests to priority right

In order to enjoy the priority right, the applicants must re-affirm this in the declarations, pay a fee for application to enjoy the priority right and, at the request of the National Office of Intellectual Property, submit the Vietnamese translations of the documents already submitted to the International Bureau according to Rule 17.1(a) of the Regulations on the PCT implementation.

61. Amendment and supplementation of documents at the national stage

In accordance with Rule 51bis of the Regulation on the PCT implementation, the applicants must submit the authorization letters and the papers on the transfer of the application-filing right at the international stage (if any)...within 34 months counting from the priority date.

In accordance with Articles 28 and 41 of the PCT and Rules 52.1.(b) and 78.1.(b) of the Regulation on the PCT implementation, at the national stage, the applicants may amend and/or supplement their applications' documents under the provisions of Point 31 of this Circular. Right at the time of entering the national stage, the applicants may amend and/or supplement the descriptions in accordance with the provisions of Point 31 of this Circular.

The amended and/or supplemented documents filed by the applicants with the National Office of Intellectual Property must be in Vietnamese.

62. Time of starting the handling of international applications

The time of starting the handling of international applications designating Vietnam or selecting Vietnam at the national stage is the first day of the 32nd month counting from the priority date, if the applicants file no written requests for the early handling of their applications.

63. Examination of international applications

International applications shall go through formality examination and substantive examination according to the procedures prescribed for applications (national applications).

64. International applications considered withdrawn

Apart from the cases where the international applications are considered withdrawn under the provisions of the PCT and the Regulation on the PCT implementation, in the cases where national fees are not paid to the National Office of Intellectual Property or there are no Vietnamese translations after the expiry of the time limits prescribed at Points 58 and 59 of this Circular, the international applications designating or selecting Vietnam shall be considered withdrawn.

65. Charges and fees

The filers of international applications of Vietnamese origin must pay various charges and fees at the rates and according to the procedures prescribed in the Regulation on the PCT implementation and according to the regulations of the Ministry of Finance.

Chapter VI

AMENDMENT, MAINTENANCE OF THE VALIDITY OF PROTECTION TITLES

Section 1. Amendment of protection titles

66. The right to request amendment of protection titles

The protection title owners may request the National Office of Intellectual Property to record all changes in their names and addresses and the change of the protection title owners (ownership transfer due to inheritance, merger, splitting or separation, transformation of the legal form of the business establishments or under court decisions...). The beneficiaries of the rights of the protection title owners shall be also entitled to request the recording of the change of the protection title owners.

The requesters for the recording of the changes in names and addresses, the change of the protection title owners must pay a fee for amendment of protection titles.

67. Written requests for amendment of protection titles

In order to have the above-mentioned contents amended, the protection title owners must file with the National Office of Intellectual Property the written requests for amendment of protection titles, comprising:

- a) The declarations requesting the amendment of the protection titles, made according to a set form;
- b) The original protection titles;
- c) Documents certifying the change of the protection title owners (written certifications of inheritance rights, written certification of the merger, consolidation, splitting or separation of legal persons, court decision...) (if there are requests for the recording of the change of protection title owners);

- d) Vouchers on the payment of the fees for amendment of protection titles;
- e) The authorization letters (in case of filing application through representatives).

68. A request for amendment of many protection titles

A written requests for amendment of a protection title may be related to many protection titles and may be merged into the applications prescribed at Points 31.1, 31.2 and 31.4 of this Circular if they share the same change/correction/amendment, provided that the requesters pay a fee for each protection title and/or related written application.

69. Handling a written requests for amendment of protection titles

The National Office of Intellectual Property shall consider the written requests for amendment of protection titles within one month counting from the date of receipt thereof. If deeming that the written requests are proper, the National Office of Intellectual Property shall amend the protection titles, make registration and publish such amendments in the Industrial Property Gazette. In the opposite case, the National Office of Intellectual Property shall notify the requesters its intention to refuse to make such amendments, clearly stating the reasons therefor and fix a two month time limit starting from the date of notification for the requesters to correct mistakes or give protests. If, within the fixed time limit, the requesters fail to correct mistakes or correct them unsatisfactorily and/or give no protests or give implausible protests, the National Office of Intellectual Property shall issue official notices declining the requests.

Section 2

MAINTENANCE OF THE VALIDITY OF PROTECTION TITLES

70. Fee for validity maintenance

In order to maintain the validity of invention or utility solution protection titles, the owners thereof must pay a fee therefor within 6 months before the expiry of their valid duration. The validity maintenance fees may be paid later than the above-said time limit but must be within 6 months after the expiry of the last valid duration, and the protection title owners must pay an additional amount equal to 10% of the fee for each month of late payment.

71. Method of calculating the valid year

Each valid year of a protection title shall start on the date ending the preceding valid year and end on the same date of the same month of the subsequent year. The first valid year shall be counted from the date of the grant of the protection titles. Particularly for protection titles granted on the basis of the 1981 Regulation on innovations and inventions, the first valid year shall start on the priority date of the applications. Where the last valid year consists of less than full 12 months, the validity maintenance fee shall be calculated according to months (being equal to the validity maintenance fee of the corresponding year multiplied by the ratio between the number of months of the last valid year and 12).

72. Registration of validity maintenance

The National Office of Intellectual Property shall record the validity maintenance in the register and, the validity maintenance shall, upon requests of the protection title owners, be recorded in the relevant protection titles.

73. Restoration of the validity of protection titles, legal consequences caused by interrupted validity

If, past the time limit of 6 months but not later than 12 months counting from expiry of the valid duration, the protection title owners fail to pay fees as prescribed at Point 70 of this Circular and if the validity of their protection titles is not suspended at the requests of third persons according to the procedures prescribed at Points 52 and 53 of this Circular, the validity of such protection titles may be restored on the condition that their owners pay a fee for restoration and maintenance of the validity of the protection titles, those who have used the inventions or utility solutions in the period when the protection titles' validity is interrupted may continue using them but must not expand the use scope or volume.

Chapter VII COLLECTION, REPAYMENT OF CHARGES AND FEES; EXTENSION, SHORTENING

74. Collection of charges and fees

Upon receiving the dossiers/applications or requests for the carrying out of any other procedures, the National Office of Intellectual Property must check the vouchers on the payment of charges and/or fees.

If the charges and/or fees are not fully paid according to regulations, the National Office of Intellectual Property shall make receipt notices, clearly stating the kind and rate of each charge and fee to be paid and send them to the dossier/application filers. With the paid amounts, the charge and/or fee payers shall be issued two copies of the charge or fee receipts, clearly stating the kind and rate of the paid fee or charge, one of which to be submitted in the dossiers/applications as vouchers on the payment of charges or fees.

75. Refunding of charges and fees

The paid charges and fees shall be refunded partially or wholly at the requests of the charge and/or fee payers in the following cases:

- a) The charges or fees have been paid in excess of the prescribed rates;
- b) The case prescribed at paragraph 2, Clause 2, Article 32 of the Decree.

76. Forms of refunding of charges and fees.

76.1. The requesters of the refunding of charges and/or fees shall opt for either of the following refunding methods:

- a) To be refunded directly at the National Office of Intellectual Property or through intermediary agencies (post office, banks...); or

b) The refunded charges or fees are converted into those for other procedures. In case of refunding charges or fees through intermediary agencies, the recipients must bear the remittance costs. The requesters for the refunding of charges and/or fees must submit the declarations requesting the refunding of charges and/or fees, made according to a set form issued by the National Office of Intellectual Property, clearly stating the method of refunding charges and/or fees they opt for.

76.2. If accepting the requests for the refunding of charges and/or fees, the National Office of Intellectual Property shall make refunding notices, clearly stating the to be refunded amounts and the refunding method, then send them to the requesters. The persons who are refunded the charges and/or fees must sign the vouchers on the refunding of charges and/or fees, made by the National Office of Intellectual Property.

If declining the requests for the refunding of charges and/or fees, the National Office of Intellectual Property shall send notices thereon to the requesters, clearly stating the reasons therefor.

77. Extensions

The time limits for amendment and/or supplementation of documents at the request of the National Office of Intellectual Property and counter-arguments regarding the opinion or intention of the National Office of Intellectual Property may be extended once, with the extended duration being equal to such time limit at the request of the persons carrying out the related procedures, provided that the requesters must pay an extension fee (fee for consideration of dossiers after the time limit).

78. Shortening

The persons carrying out industrial property procedures at the National Office of Intellectual Property and competent agencies may request these agencies to carry out the procedures before the prescribed time limit on the condition that the requesters pay a fee for consideration of dossiers before the time limit.

Depending on their capabilities and specific circumstances, the National Office of Intellectual Property and competent agencies may accept or decline the requests for the carrying out of procedures before the prescribe time limit.

Chapter VIII FINAL PROVISIONS

79. Responsibilities of persons performing official duties related to industrial property

79.1. Officials, public employees of, or persons working under contracts for, the National Office of Intellectual Property and competent agencies, who are assigned to carry out the procedures prescribed in this Circular (hereinafter called to industrial property related official duty performers) shall have the obligation to strictly observe the law provisions related to the tasks they are performing.

79.2. If the industrial property related official duty performers commit any law-breaking acts, they shall be disciplined under the provisions of the Government's Decree No. 97/1998/ND-CP of November 17, 1998 on disciplining public employees and their material responsibilities and the Labor Code.

79.3. If the industrial property related official duty performers commit any law breaking acts thus causing damage to other persons, they must pay compensations therefor under the provisions of the Government's Decree No, 47/CP of May 3, 1997 on the settlement of compensation for damage caused by State employees and competent persons of the procedural agencies.

80. Appeals

Apart from the decision and notices related to the right establishment procedures, the persons carrying out the industrial property procedures prescribed in this Circular may lodge appeals or initiate lawsuits against other decisions or notices of the National Office of Intellectual Property and competent agencies according law provisions on appeals, denunciations and administrative procedures.

The order and procedures for lodging appeals and settling appeals prescribed in Article 27 of the Decree and at Points 47, 48, 49 and 50 of this Circular shall also apply, mutatis mutandis, to appeals about the above-said decisions or notices.

81. Regulations on applications and the order of carrying out industrial property procedures

The regulations on applications and the order of carrying out the invention/utility solution registration procedures complainant with the provisions of the Decree and this Circular shall be promulgated by the Ministry of Science and Technology in another document.

82. Implementation

This Circular supersedes the provisions on the procedures related to the establishment of industrial property rights over inventions/utility solutions in Circular No. 3055/TT-SHCN of December 31, 1996 of the Ministry of Science, Technology and Environment.

This Circular takes effect 15 days after its publication in the Official Gazette.

For the Minister
Of Science and Technology

Vice Minister
BUI MANH HAI