

**THE GOVERNMENT**  
**No. 103/2006/ND - CP**

**THE SOCIALIST REPUBLIC OF VIETNAM**  
**Independence – Freedom – Happiness**

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*Hanoi, September 22, 2006*

**DECREE**

**Making detailed provisions and providing guidelines for implementing certain Articles of the Intellectual Property Law concerning industrial property**

**THE GOVERNMENT**

Pursuant to the Law on the Organization of the Government of 25 December 2001;

Pursuant to the Civil Code of 14 June 2005;

Pursuant to the Intellectual Property Law of 29 November 2005;

At the request of the Minister of Science and Technology;

**DECREES**

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1. The Scope of regulation**

This Decree makes detailed provisions and provides guidelines for implementing the provisions of the Intellectual Property Law concerning establishment, holders and contents of, limitations to, and transfer of industrial property rights, industrial property agency and measures to promote industrial property activities.

**Article 2. Applicable subjects**

1. Individuals, legal entities and other civil right holders (hereinafter jointly referred to as organizations and individuals).
2. Foreign organizations and individuals that satisfy the requirements for enjoying industrial property protection in Vietnam under international treaties to which Vietnam is party.  
The international treaties referred to in this paragraph shall include:
  - a) The Paris Convention for the Protection of Industrial Property of 1883 as amended in 1967 (hereinafter referred to as the Paris Convention).
  - b) The Vietnam-US Bilateral Trade Agreement of 2000.

- c) The Agreement on Protection of Intellectual Property Rights and Cooperation in the field of intellectual property between Vietnam and Switzerland of 1999.
- d) The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of 1994, to be applied from the date of accession of Vietnam to the World Trade Organization (WTO).
- (đ) Other international treaties concerning the protection of industrial property rights to which Vietnam is party.

### **Article 3. Responsibility for State administration of industrial property**

1. The Ministry of Science and Technology shall have the following responsibilities in state administration of industrial property:

- (a) Formulation and organization of the implementation of strategies of and policies on industrial property rights protection;
- (b) Promulgation, submission to the competent agency for promulgation of and organization of the implementation of legal instruments on industrial property;
- (c) Organization of a system of agencies performing the function of state administration of industrial property
- (d) Providing operational instructions and organizing professional and operational training courses on industrial property;
- (d) Organization of the establishment of industrial property rights; registration of industrial property rights transfer contracts and other procedures relating to protection titles for industrial property rights;
- (e) Enforcement of the right of requesting compulsory licensing of inventions in accordance with Article 147 of the Intellectual Property Law;
- (g) Taking lead or coordinating in the implementation of various measures to protect legitimate rights and interest of organizations, individuals, the State and of the society in the industrial property field;
- (h) Management of industrial property assessment activities; issuing of Industrial Property Assessor Cards;
- (i) Inspection and control of the observance of industrial property legislation; settlement of industrial property appeals and denunciations, and handling violations of the laws on industrial property;
- (k) Organization of the industrial property information and statistics activities ;

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- (l) Organization of activities to educate, disseminate and popularize legal knowledge, policies and laws on industrial property;
- m) Taking lead and coordinating with the Ministry of Education and Training and the Ministry of Justice to develop curricula and organizing training and enhancement of knowledge of the law on industrial property;
- (n) Management of industrial property agency activities; issue of practicing certificates of industrial property agents;
- (o) Examination of qualifications and operational skills; issue of practicing certificates and management of operations of business organizations and individuals practicing industrial property agency practice;
- (oo) International cooperation on industrial property; proposal of ways to settle disputes between Vietnam and other nations regarding industrial properties.

The National Office of Intellectual Property under the Ministry of Science and Technology shall be the agency in charge of assisting the Minister of Science and Technology in carrying out the function of State administration of industrial property. The Minister of Science and Technology shall stipulate in details the functions, duties and powers of the National Office of Intellectual Property.

2. People's Committees of provinces and cities under central authority shall have the following responsibilities for State management of industrial property in their localities:
- a) Organization of the implementation of policies and laws on industrial property;
  - b) Development, issuance, and organization of the implementation of local regulations of the localities on industrial properties;
  - c) Organization of the administration mechanism of industrial property activities in the localities and implementation of various measures to improve the efficiency of that mechanism;
  - d) Organization of the dissemination and popularization of legal knowledge and policies concerning industrial property; taking of measures to enhance industrial property.
  - (d) Providing guidelines and assisting organizations and individuals to complete procedures relating to industrial property.
  - (e) Coordinating with relevant agencies to protect industrial property rights and deal with breaches of industrial property legislation.

- (g) Inspection and control of compliance with the law on industrial property, settlement of complaints and denunciations relating to industrial property in the localities;
- (h) Management of geographical indications pertaining to their localities; and
- (i) International cooperation in industrial property in the localities.

Departments of Science and Technology under People's Committees of provinces and cities under central management shall have the responsibility to assist the People's Committees to perform State management of industrial property in their localities. People's Committees of provinces and cities under central management shall stipulate in details the functions, duties and powers of Departments of Science and Technologies.

3. Ministries, Ministerial level agencies, and Governmental agencies shall be responsible to organise and give instructions to the observance of the law on industrial property and to manage industrial property objects under their management.

#### **Article 4. Method of calculation of term**

The method of calculation of the terms in industrial property activities shall be in accordance with the provisions on terms in Chapter VIII, Part One of the Civil Code.

#### **Article 5. Industrial property fees and charges**

The Ministry of Finance shall take the leading role and coordinate with the Ministry of Science and Technology in stipulating and providing guidelines for implementation of the regime of collection, payment, management and use of various industrial property fees and charges.

### **Chapter II ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS**

#### **Article 6. Bases and procedures for establishment of industrial property rights**

1. Industrial property rights to inventions, layout designs, industrial designs, marks and geographical indications shall be established on the basis of a decision from the State administration agency for industrial property to grant the Protection Title to the applicant for registration of those objects as set out in Chapters VII, VIII and IX of the Intellectual Property Law. Industrial property rights in the marks internationally registered under the Madrid Agreement and the Madrid Protocol shall be established on the basis of recognition of such international registration by the State administration agency.
2. Industrial property rights to well-known marks shall be established on the basis of the widespread use practice of those marks in accordance with Article 75 of the Intellectual Property Law without completing registration procedures.
3. Industrial property rights to trade names shall be established on the basis of lawful use of the trade names corresponding to the relevant area (territory) and the business field

without completing registration procedures.

4. Industrial property rights to business secrets shall be established on the basis of financial and intellectual investments or any [other] lawful methods to acquire, create or obtain information and to keep confidentiality of the information which forms the business secrets without completing registration procedures.
5. The Ministry of Science and Technology shall stipulate in details the form and contents of the applications for registration of industrial property stipulated in Articles 100, 101, 102, 103, 104, 105, 106, 107 of the Intellectual Property Law, provide guidelines on the procedures and formalities for processing such applications, issue the forms of Protection Titles and the National Register of Industrial Property and stipulate the form and contents of the Industrial Property Official Gazette.

#### **Article 7. Right to registration of industrial property under international treaties**

1. A foreign organization or individual that satisfies the requirements for enjoying industrial property protection in Vietnam as stipulated in Article 2 of this Decree may prepare and file application for registration of industrial property rights in Vietnam under the treaties on or relating to the filing of international applications.

International treaties specified in this paragraph shall include:

- a) The Patent Cooperation Treaty of 1970 as amended in 1984 (hereinafter referred to as the PCT Treaty).
- b) The Madrid Agreement on the International Registration of Marks of 1891 as amended in 1979 (hereinafter referred to as the Madrid Agreement) and the Protocol of 1989 relating to the Madrid Agreement (hereinafter referred to as the Madrid Protocol).
- c) Other international treaties on or relating to the filing of international applications to which Vietnam is party from the time such international treaties take effect with respect to Vietnam.

2. A Vietnamese organisation or individual may file international applications for registration of industrial property to request protection of their rights in Vietnam if so stipulated in the international treaties.

#### **Article 8. Right to registration of foreign geographical indications**

A foreign organisation or individual being the right holder of geographical indications under the law of the country of origin shall have the right to register such geographical indications in Vietnam.

#### **Article 9. Right to registration of inventions, industrial designs and layout designs of the State**

1. Where an invention, industrial design or a layout design is created on the basis of full financial, material and technical investments by the State, the right to registration of

such invention, industrial design or layout design shall belong to the State. The organization or agency assigned by the State to act as the investment owner shall exercise the above right to registration for and on behalf of the State.

2. Where an invention, industrial design or a layout design is created on the basis of a capital contribution by the State (either by way of funds or material and technical facilities), a part of the right to registration of such invention, industrial design or layout design shall belong to the State pursuant to the percentage of its capital contribution. The organization or agency which acts as the owner of the State capital contribution shall be responsible to exercise the State share in the above right to registration for and on behalf of the State.
3. Where an invention, industrial design or a layout design is created on the basis of the research and development cooperation between a State agency/organization and another organization/individual, unless it is otherwise agreed in the research and development cooperation agreement, a part of the right to registration of such invention, industrial design or layout design shall belong to the State pursuant to the percentage of the contribution by such State agency/organization. The State agency or organization which takes part in the research and development cooperation shall be responsible to exercise the above right to registration for and on behalf of the State.
4. The State agency/organization exercising the right to registration of an invention, industrial design or a layout design as set out in paragraphs 1, 2, 3 and 4 of this Article shall be named as owner of the Protection Titles on behalf of the State and perform management of industrial property rights over such objects, and have the right to transfer the part of registration right of the State to another organization or individual provided that the transferee organization/individual must pay or provide the State an amount of money or other reasonable commercial conditions determined as comparable to the commercial potential of such invention, industrial design or layout design.

#### **Article 10. Priority right of applications for registration of inventions, industrial designs and marks**

The priority right of applications for registration of inventions, industrial designs and marks provided for in Article 91 of the Intellectual Property Law shall be applied as follows:

1. Where the applicant for registration of an invention, industrial design or a mark wishes to enjoy the priority right under the Paris Convention, his/her claim for such priority right shall be accepted if the following conditions are met:
  - a) The applicant is a national of Vietnam or of a member country of the Paris Convention or is a resident of or has a business/production establishment in Vietnam or in that member country of the Paris Convention;
  - b) The first application has been filed in Vietnam or in a member country of the Paris Convention and such application contains part(s) corresponding to the request for the priority right of the application for registration of invention, industrial design or mark;

- c) The application for registration is filed within the following time limits counted from the filing date of the first application: six (6) months for the application for registration of industrial design or mark ; twelve (12) months for the application for registration of invention;
  - d) In the application for registration of invention, industrial design and mark, the applicant clearly expresses his/her claims for priority right and provides a copy of the first application as referred to in point (b) of this paragraph, if the application was filed abroad, which must include certification by the Office that received the first application;
  - d) Fees for claiming priority rights have been paid in full.
2. Where the applicant for registration of an invention, industrial design or a mark wishes to enjoy priority right under another international treaty, his/her claim for such priority right shall be accepted if all the conditions for the priority right set out in that international treaty are satisfied.

#### **Article 11. International applications for registration of inventions**

1. In this Article, “the PCT application” shall be construed as an application for registration of an invention which is filed under the PCT Treaty, including:
- a) Applications with request for protection in Vietnam, filed in any member countries of the PCT Treaty, including Vietnam (hereinafter referred to as PCT Application designating or selecting Vietnam).
  - b) Applications filed in Vietnam with request for protection in any member countries of the PCT Treaty, including Vietnam (hereinafter referred to as PCT Application originating from Vietnam)..
2. A PCT application designating or selecting Vietnam shall be considered by the State administration agency for industrial property when the following conditions are fully satisfied:
- a) Within 31 months from the filing date of the international application, or from the priority date (if priority right is claimed), the applicant carries out the procedures for registering the invention at the State administration agency for industrial property of Vietnam (the National Phase) in accordance with the PCT Treaty ;
  - b) Industrial property fees and charges have been paid in accordance with the law.
3. A PCT application originating from Vietnam must be made either in English or Russian language and must satisfy all the requirements of the PCT Treaty as to the form and contents. The applicant may file it with the State administration agency for industrial property or with the International Bureau of the World Intellectual Property Organization (WIPO).
4. The Ministry of Science and Technology shall specify in details the formalities, contents, orders and procedures for processing PCT applications from other countries designating or selecting Vietnam, and PCT applications originating from Vietnam.

## **Article 12. International applications for registration of marks**

1. In this Article, “the Madrid Application” shall be construed as an international application for registration of a mark filed under the Madrid Agreement or the Madrid Protocol, including:
  - a) Applications requesting for protection of marks in Vietnam, originating from other member countries of the Madrid Agreement or the Madrid Protocol, hereinafter referred to as Madrid Applications designating Vietnam.
  - b) Applications requesting for protection of marks in other member countries of the Madrid Agreement or the Madrid Protocol which are filed in Vietnam, hereinafter referred to as Madrid Applications originating from Vietnam.
2. After being published by the International Bureau of the World Intellectual Property Organization (WIPO), a Madrid Application designating Vietnam shall be examined as to substance like any application filed under national procedure.

For a mark accepted for protection, the State administration agency for industrial property shall issue a Decision on accepting protection of internationally registered marks and publish in the Official Gazette on Industrial Property. At the request of right owner, the State administration agency for industrial property shall issue a certificate of internationally registered mark being protected in Vietnam.

3. Vietnamese organizations and individuals may exercise the right to international registration of marks under the Madrid Agreement or the Madrid Protocol in accordance with the following stipulations:
  - a) To file the application under the Madrid Agreement if requesting for protection in a member country of the Madrid Agreement, provided that the mark has been granted Protection Title in Vietnam;
  - b) To file the application under the Madrid Protocol, if requesting for protection in a country which is a member of the Madrid Protocol but not a member of the Madrid Agreement, provided that an application for registration of the mark in Vietnam has been filed.
4. For a Madrid Application originating from Vietnam, the State administration agency for industrial property shall be the receiving office.
5. The Ministry of Science and Technology shall stipulate in details the formalities, contents, orders and procedures for processing Madrid applications.

## **Article 13. Establishment of industrial property rights on the basis of international treaties on mutual recognition of protection**

1. In case an international treaty concerning industrial property to which Vietnam is party provides for the recognition and protection of industrial property rights of organizations and individuals of treaty members, industrial property rights of organizations and

individuals of other member countries of such treaty shall be recognized and protected in Vietnam

Industrial property rights shall be protected in accordance with the scope and term of protection pursuant to the provisions of the treaty without having to complete registration procedures as provided for by the Intellectual Property Law.

2. The Ministry of Science and Technology shall announce all the necessary information relevant to the industrial property rights being recognized and protected in Vietnam there under.

#### **Article 14. Appeals and settlement of appeals against registration of industrial property rights**

1. The applicant and any organization or individual with rights and interest directly related to a decision or notification concerning the processing of an industrial property application issued by the State administration agency for industrial property shall have the right to appeal to the State administration agency for industrial property or initiate a lawsuit to the court in accordance with the Intellectual Property Law and relevant laws. The time limit for settlement of appeals shall be as stipulated in paragraph 5 of this Article.
2. Upon the expiration of the time limit for settlement of an appeal by the agency directly issuing the decision or notification relating to industrial property (first instance appeal), if the appeal is not dealt with or in case of disagreement with the settlement decision of the agency, the appellant, the persons with rights and interest directly related to such decision shall have the right to appeal to the Minister of the Ministry of Science and Technology (second appeal) or to proceed with litigation to the court. Upon the expiration of the time limit for settlement of the second appeal referred to in paragraph 5 of this Article, [<sup>1</sup>if the appeal is not dealt with] or in case of disagreement with the settlement decision of the Minister of Ministry of Science and Technology, the appellant, the persons with rights and interest directly related to such decision shall have the right to proceed with litigation to the court.
3. The appeal must be presented in writing and must specify the full name and address of the appellant; serial number, signing date and contents of the notification or decision subject to the appeal; the contents, arguments and evidence the appeal are based on; specific claims for amendment or annulment of the relevant notice or decision.
4. The right to appeal shall only be exercised within the following time limit that does not include the period of any objective obstacles due to which the appellant cannot exercise his/her right to appeal:
  - a) The time limit for making the first instance appeal shall be ninety (90) days from the date the appellant receives or knows about the decision or notification on the processing of his/her industrial property registration application.
  - b) The time limit for making the second appeal shall be 30 days from the expiry

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<sup>1</sup> Added by translator, seems missing

date of the term for settling the first instance appeal as referred to in paragraph 5 of this Article if by that date the first instance appeal is not dealt with or from the date the appellant receives or knows about the first appeal settlement decision.

5. Within 10 days from the date of receipt of the petition relating to issuance, amendments, termination, cancellation or renewal of validity of Protection Titles, the person authorized to deal with appeals must serve a notice of acceptance or refusal of such petition, with reasons for such refusal clearly stated therein.

The time limits for settlement of appeals shall comply with the provisions of the law on complaints.

The period of time for amending or supplementing documents to the dossier of the petition shall not be included in the time limit for settlement of appeals.

6. Order and procedures for settlement of appeals shall be in accordance with the provisions of the law on complaints.

### **Chapter III**

#### **HOLDERS, SCOPE AND LIMITATIONS OF INDUSTRIAL PROPERTY RIGHTS**

##### **Article 15. Holders of industrial property rights**

1. Holders of industrial property rights include organizations and individuals owning industrial property objects as provided for in Article 121 of the Intellectual Property Law or organizations or individuals to whom the industrial property rights are transferred by the owners; authors of inventions, industrial designs and layout design as provided for in Article 122 of the Intellectual Property Law.
2. Where a protection title for an invention, industrial design, a layout design or a mark has been jointly granted for several organizations and individuals in accordance with Articles 86.3, 87.5 and 90.2 of the Intellectual Property Law, the industrial property right shall belong to the common ownership of such organizations and individuals. The co-owners shall take ownership in accordance with the provisions of the civil law.

##### **Article 16. Scope of industrial property rights**

1. The scope of industrial property rights over an invention, industrial design, a layout design, mark or a geographical indication shall be determined in accordance with the scope of protection as stated in relevant protection title.
2. The scope of rights over trade names shall be determined according to the scope of protection of trade names, including trade names, fields of business and territory of business in which the trade name is lawfully used by the trade name owner. The registration of a name by an organisation or individual in the business procedures shall not be considered as the use of such name, but as a condition for the use of such name to be considered as lawful.
3. The scope of rights over business secrets shall be determined according to the scope of protection of such business secrets, including a combination of information forming up such business secrets, as organised in such an exact and complete order that they become

exploitable.

4. Holders of industrial property rights shall have the rights and be subject to the obligations within the scope of protection in accordance with the conditions provided for in Articles 132 to Article 137 of the Intellectual Property Law.

#### **Article 17. Respect of pre-established rights**

1. Industrial property rights may be canceled of validity or prohibited from use if conflicting with intellectual property of other organisations or individuals that have previously been established.

2. The Ministry of Planning and Investment shall take the leading role and coordinate with Ministry of Science and Technology in providing guidelines on the naming of enterprises in business registration procedures in order to avoid infringement of rights to trademarks, trade names, geographical indications which have previously been protected.

#### **Article 18. Rights of authors of inventions, industrial designs and layout designs**

1. Personal rights of an author as set out in Article 122.2 of the Intellectual Property Law shall be protected for infinite period of time.

2. The right to receive remuneration of an author as set out in Article 122.3 of the Intellectual Property Law shall be protected throughout the term of protection of the invention, industrial design and layout design.

3. Unless otherwise agreed between the owner and author, the payment of remuneration must be made no later than 30 days as from the date of receipt by the owner of the licensing fee or from the date of receipt by the owner of the proceeds from each period of use of his/her invention, industrial design or layout design; if invention, industrial design or layout design is used continuously, each payment period must not exceed six (6) months from the end of the preceding payment period.

4. The Ministry of Finance shall coordinate with the Ministry of Science and Technology in making detailed provisions and providing guidelines for the determination of the proceeds of use of inventions, industrial designs or layout designs.

#### **Article 19. Exercise of the State ownership to geographical indications**

1. The agency or organization that exercises the right to management of geographical indications as stated in Article 121.4 of the Intellectual Property Law shall include:

- a) The people's committee of the province or city under central authority where the geographical area corresponding to the geographical indication is located, if the geographical indication concerns one locality;
- b) The people's committee of the province or city under central authority which is authorized by other people's committees of the provinces or cities under central authority where the geographical area corresponding to the geographical indication is located, if the geographical indication concerns more than one

locality.

- c) Agency or organisation assigned by People's Committees of provinces and cities under central authority to manage geographical indications, provided that such agency or organisation represents the benefits for all organisations and individuals conferred with the right to use such geographical indications according to the provisions of Article 121.4 of the Law on Intellectual Property.

2. An organisation managing geographical indications shall be allowed to exercise the rights of the owner of such geographical indications as stipulated in Articles 123.2 and 198 of the Intellectual Property Law.

3. The Ministry of Agriculture and Rural Development, the Ministry of Fisheries and the Ministry of Industry shall take the leading role and coordinate with People's Committees of provinces and cities under central authority to determine the specialities, features of products, production process of such specialities carrying geographical indications within the scope of management of such ministries or localities.

4. People's Committees of provinces and cities under central authority shall carry out registration procedures and organise management of geographical indications used for the localities' specialities.

#### **Article 20. Keep secrecy of test data**

The Ministry of Health, the Ministry of Agriculture and Rural Development shall take the leading role and coordinate with the Ministry of Science and Technology in providing guidelines on implementing the keeping secrecy of test data in the procedures for registration for circulation of products stipulated in Article 128 of the Intellectual Property Law.

#### **Article 21. Use of industrial property objects**

1. Acts of circulating products stipulated in point d paragraph 1, point b paragraph 2, point b paragraph 5 and point b paragraph 7 of Article 124 of the Intellectual Property Law shall include, inter alia, acts of sale, display for sale and transportation of products.

2. Products having been legally put into the marketplace, including foreign markets, stipulated in Article 125.2.b of the Intellectual Property Law shall be understood as products having been put into the marketplace, whether domestic or foreign, by the owners, transferees of the right to use, including the case of transfer under compulsory decisions, and holders of prior use right to the industrial property objects.

#### **Article 22. Use of inventions on behalf of the State**

1. Any use of an invention for public non-commercial purposes, national defence, security, disease prevention, treatment and nutrition for people and to meet other urgent needs of the society under the provisions of Article 133.1 of the Intellectual Property Law shall be implemented by ministries, ministerial-level agencies or by another organization or individual as so assigned by them under a decision on compulsory licensing of the invention stipulated in Article 145.1.a and the second paragraph of Article 147.1 of the Intellectual Property Law.

2. Where the demands for national defense, security, disease prevention and treatment, and

nutrition for the people or other urgent needs of the society are satisfied with imported products, or products made by the parties receiving the rights to use the inventions under production contract, the person holding exclusive right to use the invention shall not be required to perform the obligation of producing the protected products or of applying the protected process stipulated in paragraph 1 of this Article.

#### **Article 23. Obligations to use inventions**

1. When there arise the demands for national defense, security, disease prevention and treatment, nutrition for the people and other urgent needs of the society but the persons holding the exclusive right to use inventions fails to perform the obligation to produce such protected products or to apply such protected process in Vietnam to satisfy such demands in accordance with Article 136.1 and Article 142.5 of the Intellectual Property Law, the Ministry of Science and Technology may permit other organizations and individuals to use such inventions by issuing decisions on compulsory licensing to use such inventions in accordance with the provisions in Article 145.1.b and the first paragraph of Article 147.1 of the Intellectual Property Law.

2. Where the demands for national defense, security, disease prevention and treatment, nutrition for the people and other urgent needs of the society are satisfied by imported products, or products made by the parties receiving the right to use the inventions under production contracts, the persons holding exclusive right to the inventions shall not be required to perform the obligation of producing such protected products or to apply the protected process stipulated in paragraph 1 of this Article.

#### *Chapter IV*

#### **TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

#### **Article 24. The remuneration price of the right to use inventions which is transferred under a decision on compulsory licensing**

1. The remuneration price for the right to use an invention subject to compulsory licensing as set out in Article 146.1(d) of the Intellectual Property Law shall be determined in accordance with the economic value of the right to use subject to that licensing taking into account the following factors:
  - a) The price of transfer of the right to use such invention on a contractual basis.
  - b) The funds invested to create such invention where the portion of State budget funds (if any) must also be considered.
  - c) Profits from the use of such invention.
  - d) The remaining period of validity of the protection title.
  - d) The necessity of the transfer of the right to use such invention.
  - e) Other factors directly determining the economic value of the licensed rights.

2. The remuneration price shall not exceed 5% of the net sales price of the products manufactured under that invention provided that the principles set out in clause 1 of this Article are conformed with.
3. The agency authorized to issue a decision on compulsory licensing of the right to use an invention may set up a council of evaluation or call for expert opinions in order to determine the remuneration price referred to in paragraph 1 of this Article.

**Article 25. Dossier and procedures for transfer of the right to use inventions under decision on compulsory licensing**

1. The Ministry of Science and Technology shall stipulate in details the form and contents of dossiers for transfer of the right to use inventions stipulated in Article 147.1 of Law on Intellectual Property, except for the provisions in paragraph 2 of this Article; and it shall stipulate and organise implementation of the procedures for receiving and processing requests for transfer of the right to use inventions.

2. The Ministry of Health and the Ministry of Agriculture and Rural Development shall take the lead and coordinate with the Ministry of Science and Technology to provide guidelines and organise implementation of the procedures for compulsory licensing the right to use inventions and to use inventions on behalf of the State to secure health care and nutrition demands for the people.

**Article 26. Dossier and procedures for registration of contracts on transfer of industrial property rights**

1. The Ministry of Science and Technology shall stipulate in details the form and contents of all types of dossiers on registration of contracts on transfer of industrial property rights stipulated in Article 149 of the Law on Intellectual Property.

2. The Ministry of Science and Technology shall stipulate the procedures for receiving and processing dossiers for registration of transfer of industrial property rights.

*Chapter V*  
**INDUSTRIAL PROPERTY AGENTS**

**Article 27. Legal training program on industrial property**

1. The Ministry of Science and Technology shall take the lead and coordinate with the Ministry of Education and Training and the Ministry of Justice to provide in details the legal training program on industrial property stipulated in Article 155.3 of the Law on Intellectual Property.

2. An individual shall be deemed to have completed a legal training program on industrial property specified in point d clause 2 Article 155 of the Law on Intellectual Property in the following cases:

- a) being the author of the undergraduate or graduate project on industrial property;
- b) having completed the training course on industrial property recognised by the Ministry

of Science and Technology.

**Article 28. Examination of professional competence of industrial property agency**

1. Examination of professional competence of industrial property agency is conducted to assess the capacity to apply law on industrial property to settle specific issues relating to establishment and protection of industrial property rights.

2. The contents of examination of professional competence of industrial property agency include the skills of applying the law on industrial property to settle cases relating to protection of industrial property objects.

3. The Ministry of Science and Technology shall provide guidelines and organise examinations of professional competence of industrial property agency.

**Article 29. Issuance and revocation of Practicing certificates of industrial property agents**

1. Practicing certificates of industrial property agents are issued to individuals satisfying the conditions stipulated in Article 155.2 of the Law on Intellectual Property upon request of such individuals after fees and charges have been fully paid as required by law.

2. Practicing certificates of industrial property agents shall be revoked in the following cases:

a) The persons granted with such Practicing certificates of industrial property agents cease to perform industrial property agency activities;

b) The persons granted with Practicing certificates of industrial property agents no longer satisfy the conditions stipulated in Article 155.2 of the Intellectual Property Law;

c) The persons granted with Practicing certificates of industrial property agents commit serious violations of the provisions in Article 152.3 and Article 153 of the Intellectual Property Law;

d) The persons granted with Practicing certificates of industrial property agents commit serious mistakes in industrial property agency activities, causing damage to the interests of the State and society.

đ) The persons granted with Practicing certificates of industrial property agents take abuse of the industrial property agency to carry out activities beyond the scope of industrial property agency stipulated in Article 151.1 of the Law on Intellectual Property.

3. The Ministry of Science and Technology shall issue and revoke Practicing certificates of industrial property agents.

4. Organisations satisfying all conditions under Article 154 of the Law on Intellectual Property shall be recognised as organizations conducting business of industrial property representation service in the National Register for industrial property agency and published in the Industrial Property Official Gazzette at their requests and after the payment of prescribed

fees and charges.

5. An organization conducting business of industrial property representation service shall have its name removed from the National Register for industrial property agents and such removal shall be published in the Industrial property Official Gazette in the following cases:

a) The organization conducting business of industrial property representation service gives up business of industrial property representation service;

b) The organisation conducting business of industrial property representation service no longer fulfill the conditions provided for in Article 154 of the Intellectual Property Law;

c) The organisation conducting business of industrial property representation service commits serious violations of the provisions of Article 152.3 and Article 153 of the Law on Intellectual Property;

d) The organisation conducting business of industrial property representation service commits serious mistake while providing industrial property agency services, causing damage to the interest of the State and society;

d) The organisation conducting business of industrial property representation service taking abuse of industrial property agency to carry out activities beyond the scope of industrial property agency services provided for in Article 151.1 of the Intellectual Property Law.

6. Requests for re-issuance of Practicing certificates of industrial property agents or for re-recognition as an organisation conducting business of industrial property representation service in the National Register for industrial property agency in case of revocation or removal under points c, d and d clause 2 or points c, d and d clause 5 of this ARTicle shall only be considered after 3 years from the date of such revocation or removal.

## **Chapter VI**

### **MEASURES TO DEVELOP INDUSTRIAL PROPERTY ACTIVITIES**

#### **Article 30. Training and fostering personnel for industrial property activities**

1. The Ministry of Science and Technology shall take the lead and coordinate with the Ministry of Justice, the Ministry of Education and Training to provide in details for the contents of industrial property training and fostering programs.

2. The Ministry of Justice shall take the lead and coordinate with the Ministry of Science and Technology in developing the contents and programs on fostering industrial property knowledge for those holding judicial titles.

3. The Ministry of Science and Technology shall take the lead and coordinate with relevant ministries and sectors in organizing industrial property fostering courses for officers in charge of State management, examination, evaluation and settlement of industrial property violations and infringements.

4. The Ministry of Education and Training shall take the lead and coordinate with the Ministry of Justice and the Ministry of Science and Technology in developing training programs and organizing the industrial property training in education institutions.

#### **Article 31. Assurance of industrial property information**

1. The system of industrial property information consists of all relevant information about industrial property objects being protected in Vietnam, selective information either in accordance with the objectives or topics relating to foreign industrial property objects which is classified and arranged in a suitable and convenient order to facilitate the searching (reference), distribution and using activities.
2. The Ministry of Science and Technology shall be responsible for setting up and managing industrial property information storage, developing classification and searching instruments, providing guidelines for how to search and use domestic and foreign industrial property information; organizing the supply of information in a timely, complete and accurate manner, and securing the access to the information storage for those needing to use the information to facilitate activities of establishment and protection of industrial property rights, research, development and business activities.

3. Research and development projects and themes shall not be funded by the State budget if search of information on inventions are not carried out during the stage of development of their framework or if they are identical to prior available invention information, except for those aimed at pilot application or at finding technical know-how to exploit the existing inventions.

The Ministry of Science and Technology shall be responsible for providing patent search service upon request of organizations, agencies or individuals developing, approving or accepting research and application projects and themes involving State budget, provided that fees for information search are paid in accordance with the regulations of the Ministry of Finance.

#### **Article 32. Accounting for the costs and values relating to industrial property**

1. The costs incurred for the following purposes shall be regarded as reasonable expenses of an enterprise:
  - a) Cost of creating an invention, industrial design or a layout design; cost of designing the sample of a mark or the logo of the enterprise.
  - b) Cost of completion of procedures for registration, maintenance and renewal of the right to inventions, industrial designs, layout designs, marks or geographical indications, including completion of those procedures overseas.
  - c) Cost of taking appropriate measures to keep secrecy of business secrets or to protect the rights to an invention, industrial design, layout design, mark or geographical indication.
  - d) Cost of making payment of remuneration to the author.

- d) Cost of purchasing the ownership right or the right to use an invention, industrial design, a layout design, a mark or business secret.
- 2. Any inventions, industrial designs, layout designs, marks, trade names, business secrets and other relevant industrial property rights which are effective at the accounting time and are created by or transferred or assigned to the enterprise shall be intellectual properties of the enterprise and included in the total assets of the enterprise.
- 3. The Ministry of Finance shall take the lead and coordinate with the Ministry of Science and Technology in providing guidelines for how to account for those industrial properties related costs and how to determine the value of intellectual properties in accordance with paragraphs 1 and 2 of this Article.

**Article 33. Extension of the scope of using inventions, industrial designs and layout designs of the State**

- 1. For a State owned invention, industrial design or layout design and in case the holder of the protection title thereto is not capable of meeting the demand of the society, other State organizations may request the holder of the protection title to transfer the right to use such invention, industrial design or layout design under the following conditions:
  - a) The right to use such invention, industrial design or layout design shall be transferred on a non-exclusive basis and shall not be transferred to others.
  - b) The scope of using such invention, industrial design or layout design by the transferee shall not prejudice to the use of such invention, industrial design or layout design to the most extent of the holder of the protection title.
  - c) Where the inventions, industrial designs or layout designs are used for non-commercial purpose, the price of transfer of such invention, industrial design or layout design payable by the transferee to the holder of the protection title shall be equal to 50% of the rate payable by an organization other than a State organization in order to use such invention, industrial design or layout design under the same conditions.
- 2. The transfer of the right to use a State owned invention, industrial design or layout design to a State organization as referred to in paragraph 1 of this Article shall not prejudice to the right of the holder of the protection title to further transfer the right to use such invention, industrial design or layout design to other non-State organizations.

**Article 34. Encouraging social and socio-professional organizations to conduct industrial property activities**

A social or socio-professional organization operating in the field of industrial property shall be facilitated to perform the functions of social consultancy and review (criticism) on intellectual property and to develop non-state social service activities in order to promote their supporting roles to the activities of State agencies and to industrial property right holders.

**Article 35. Other measures to encourage creative activities**

The State encourages and assists activities of technology creation by the following measures:

1. To assist various technical creative events.
2. To commend and reward; popularize creative experiences and methods, and typical examples of creative labor.
3. To support activities of establishment and protection of industrial property rights to creative achievements.

## **Chapter VII IMPLEMENTATION PROVISIONS**

### **Article 36. Transitional provisions**

1. The industrial property registration applications filed with the National Office of Intellectual Property before 1 January 2006 shall be further processed in accordance with the 1995 Civil Code and its implementing documents.
2. The industrial property registration applications filed with the National Office of Intellectual Property after 1 January 2006 and before 1 July 2006 shall also be processed in accordance with the 1995 Civil Code and its implementing documents, specifically:
  - a) Applications for registration of inventions which request for the grant of a utility solution patent shall be processed as an application for registration of utility solutions.
  - b) Applications for registration of geographical indications shall be processed as application for registration of appellations of origin.
3. From 1 January 2006 to 30 June 2006, the rights and obligations under a protection title issued under the 1995 Civil Code and the 2005 Civil Code shall be further valid under the 2005 Civil Code and those provisions of the implementing documents of the 1995 Civil Code which are not contrary to the 2005 Civil Code.
4. Within 1 year since the effective date of this Decree, organizations or individuals practicing industrial property agency services lawfully under the 1995 Civil Code and its implementing documents shall be entitled to continue the operations as organizations or individuals satisfying the business conditions and practicing conditions stipulated in Articles 154 and 155 of the Intellectual Property Law.

### **Article 37. Validity**

This Decree shall take effect after 15 days from the date of publication in the Official Gazette.

All previous provisions that are contrary to the provisions hereof shall be repealed.

### **Article 38. Responsibilities of providing guidelines for implementation**

1. The Minister of Science and Technology shall provide guidelines for implementing this Decree

2. Ministers, Heads of ministerial-level agencies, Heads of Government agencies and Heads of People's Committees of provinces and cities under central authority shall be responsible for implementing this Decree.

**FOR AND ON BEHALF OF THE GOVERNMENT**  
**THE PRIME MINISTER**  
**Nguyen Tan Dung**  
(Signed and sealed)