

THE GOVERNMENT

No. 103/2006/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Hanoi, September 22, 2006

DECREE

**DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE
LAW ON INTELLECTUAL PROPERTY REGARDING INDUSTRIAL PROPERTY**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the June 14, 2005 Civil Code;
Pursuant to the November 29, 2005 Law on Intellectual Property;
At the proposal of the Science and Technology Minister;*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree details and guides the implementation of the provisions of the Law on Intellectual Property on the establishment, subject matters and contents of, and limitations on, industrial property rights, the assignment of industrial property rights, the industrial property representation and measures to promote industrial property activities.

Article 2.- Subjects of application

1. Individuals, legal entities and other subjects of the civil law (hereinafter collectively referred to as organizations and individuals).
2. Foreign organizations and individuals that satisfy all the conditions to enjoy the industrial property rights protection in Vietnam under treaties to which Vietnam is a contracting party.

Treaties mentioned in this Clause include:

- a/ The 1883 Paris Convention for the Protection of Industrial Property, which was revised in 1967 (hereinafter referred to as the Paris Convention);
- b/ The 2000 Vietnam-US Bilateral Trade Agreement;
- c/ The 1999 Agreement on Protection of Intellectual Property Rights and Cooperation in the Field of Industrial Property between Vietnam and Switzerland.

d/ The 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIP Agreement), to be applied from the time Vietnam becomes a member of the World Trade Organization (WTO).

e/ Other treaties concerning the protection of industrial property rights to which Vietnam is a contracting party.

Article 3.- Responsibilities for state management of industrial property

1. The Science and Technology Ministry has the following responsibilities for state management of industrial property:

a/ To formulate and organize the implementation of strategies and policies on protection of industrial property rights;

b/ To promulgate or submit to competent authorities for promulgation, and organize the implementation of, legal documents on industrial property;

c/ To organize the system of agencies performing the function of state management of industrial property;

d/ To provide professional guidance, and organize professional training and fostering in industrial property;

e/ To organize the establishment of industrial property rights, the registration of contracts on assignment of industrial property rights, and carry out other procedures concerning industrial property right protection titles;

f/ To exercise the right to compel the licensing of inventions according to the provisions of Article 147 of the Law on Intellectual Property;

g/ To assume the prime responsibility for, and coordinate with other agencies in, applying various measures to protect legitimate rights and interests of organizations, individuals, the State and society in industrial property;

h/ To manage the industrial property assessment activities; and to grant industrial property assessor's cards;

i/ To inspect and examine the observance of the industrial property law; to settle complaints and denunciations and handle industrial property-related violations;

j/ To organize activities of industrial property information and statistics;

k/ To organize the education, dissemination and popularization of knowledge, policies and law on industrial property;

l/ To assume the prime responsibility for, and coordinate with the Education and Training Ministry and the Justice Ministry in, elaborating training programs and organizing the training and fostering of industrial property knowledge and law;

m/ To manage activities of industrial property representation; to grant practice certificates for provision of industrial property representation services;

n/ To enter into international cooperation on industrial property; to propose the settlement of industrial property disputes between Vietnam and other countries.

The National Office of Intellectual Property is an agency attached to the Science and Technology Ministry, having the responsibility to assist the Science and Technology Minister in performing the function of state management of industrial property. The Science and Technology Minister shall specify functions, tasks and powers of the National Office of Intellectual Property.

2. People's Committees of provinces or centrally run cities have the following responsibilities for state management of industrial property in their respective localities:

a/ To organize the implementation of policies and law on industrial property;

b/ To elaborate, promulgate and organize the implementation of local regulations on industrial property;

c/ To organize the system for management of industrial property activities in their localities, and apply measures to raise the effectiveness of this system;

d/ To organize the dissemination and popularization of knowledge, policies and law on industrial property, and take measures to promote industrial property activities;

e/ To guide and assist organizations and individuals in carrying out industrial property-related procedures;

f/ To coordinate with concerned agencies in activities of protecting industrial property rights and handling violations of industrial property law;

g/ To inspect and examine the observance of industrial property law, and settle complaints and denunciations about industrial property in their localities;

h/ To manage geographical indications belonging to their localities;

i/ To enter into international cooperation on industrial property in their localities.

Provincial/municipal Science and Technology Services are agencies attached to People's Committees of provinces or centrally run cities and responsible for assisting the People's Committees in performing the function of state management of industrial property in their localities. People's Committees of provinces or centrally run cities specify the functions, tasks and powers of provincial/municipal Science and Technology Services.

3. Ministries, ministerial-level agencies and government-attached agencies are responsible for organizing and directing the enforcement of industrial property law and managing industrial property subject matters under their management.

Article 4.- Method of calculation of term

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

Article 5.- Industrial property fees and charges

The Finance Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, prescribing and guiding the collection, payment, management and use of industrial property fees and charges.

Chapter II

ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 6.- Bases and procedures for the establishment of industrial property rights

1. Industrial property rights to inventions, layout designs, industrial designs, marks and geographical indications are established on the basis of decisions of the state management agency in charge of industrial property which grants protection titles to applicants for registration of those objects according to the provisions of Chapters VII, VIII and IX of the Law on Intellectual Property. Industrial property rights to marks internationally registered under the Madrid Agreement and the Madrid Protocol are established on the basis of recognition of such international registration by the state management agency.

2. Industrial property rights to well-known marks are established on the basis of widespread use of those marks according to the provisions of Article 75 of the Law on Intellectual Property, not requiring the completion of registration procedures.

3. Industrial property rights to trade names are established on the basis of lawful use of those names according to geographical areas (territories) and business domains, not requiring the completion of registration procedures.

4. Industrial property rights to business secrets are established on the basis of financial and intellectual investments or any other lawful methods to find, create or acquire information and keep the confidentiality of information which constitutes those business secrets, not requiring the completion of registration procedures.

5. The Science and Technology Ministry specifies forms and contents of various industrial property registration applications prescribed in Articles 100, 101, 102, 103, 104, 105, 106 and 107 of the Law on Intellectual Property, guides the order and procedures for processing of applications, sets out forms of protection title and the national register of industrial property, and specifies the format and contents of the Industrial Property Official Gazette.

Article 7.- Right to registration of industrial property under treaties

1. Foreign organizations and individuals that satisfy the conditions for protection of industrial property rights in Vietnam specified in Article 2 of this Decree may file applications for industrial property registration in Vietnam under treaties on or concerning international filing procedures.

Treaties mentioned in this Clause include:

a/ The 1970 Patent Cooperation Treaty, which was revised in 1984 (hereinafter referred to as the PCT for short);

b/ The 1891 Madrid Agreement on International Registration of Marks, which was revised in 1979 (hereinafter referred to as the Madrid Agreement) and the 1989 Protocol Relating to the Madrid Agreement (hereinafter referred to as the Madrid Protocol);

c/ Other treaties on or concerning international filing procedures to which Vietnam is a contracting party, as from the date such treaties become binding on Vietnam.

2. Vietnamese organizations and individuals may file applications for international industrial property registration to request the protection of their rights in Vietnam if it is so provided for by such treaties.

Article 8.- Right to registration of foreign geographical indications

Foreign individuals and organizations that are holders of rights to geographical indications under laws of countries of origin are entitled to register such geographical indications in Vietnam.

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

1. When an invention, an 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 belongs to the State. The organization or state agency assigned by the State to act as the investor shall represent the State in exercising that right to registration.

2. When an invention, an industrial design or a layout design is created on the basis of capital contribution by the State (either in funds or material-technical facilities), part of the right to registration of such invention, industrial design or layout design belongs to the State in proportion to its capital contribution. The organization or state agency acting as the owner of the state investment capital shall represent the State in exercising that part of the right to registration.

3. When an invention, an industrial design or a layout design is created on the basis of research and development cooperation between a state agency or organization and another organization or individual, unless it is otherwise provided for in the research and development cooperation agreement, part of the right to registration of such invention, industrial design or layout design belongs to the State in proportion to such state agency's or organization's contribution to the cooperation. The state agency or organization which takes part in the research and development cooperation shall represent the State in exercising that right to registration.

4. The state agency or organization exercising the right to registration of an invention, an industrial design or a layout design specified in Clauses 1, 2 and 3 of this Article represents the State in being named as the protection title holder, manages industrial property rights to such object, and is entitled to assign the State's part of the right to registration of invention, industrial design or layout design to another organization or individual if the assignee pays to the State a specified sum of money or satisfies reasonable commercial conditions compared with the commercial potential of such invention, industrial design or layout design.

Article 10.- Priority right of applications for registration of inventions, industrial designs or marks

The priority right of applications for registration of inventions, industrial designs or marks provided for in Article 91 of the Law on Intellectual Property applies as follows:

1. When the applicant for registration of an invention, an industrial design or a mark wishes to enjoy the priority right under the Paris Convention, his/her claim for such priority right is accepted if the following conditions are satisfied:

a/ He/she is a citizen of Vietnam or of a member country of the Paris Convention or resides or has a production or production establishment in Vietnam or in that member country;

b/ His/her first application has been filed in Vietnam or in a member country of the Paris Convention and contains a section relevant to the claim for priority right in the application for registration of invention, industrial design or mark;

c/ The registration application is filed within six months, for industrial design or mark registration applications; or twelve months for invention registration applications, as from the date of first filing;

d/ In the application for registration of an invention, industrial design or mark, the applicant clearly states his/her claim for the priority right and submits a copy of the first application specified at Point b of this Clause with certification by the agency which receives the first application in case of overseas filing;

e/ The fee for claim for priority right is fully paid.

2. If the applicant for registration of an invention, industrial design or a mark wants to enjoy the priority right under another treaty, his/her claim for such priority right is accepted if all the conditions for the priority right set out in that treaty are satisfied.

Article 11.- Invention international applications

1. In this Article, "PCT applications" are referred to the applications for invention registration which are filed under the PCT, including:

a/ Applications containing a claim for the protection in Vietnam and filed in any member countries of the PCT, including Vietnam (hereinafter referred to as PCT applications designating or selecting Vietnam);

b/ Applications filed in Vietnam and containing a claim for the protection in any member countries of the PCT, including Vietnam (hereinafter referred to as PCT applications originating from Vietnam).

2. The state management agency in charge of industrial property examines a PCT application selecting or designating Vietnam when the following conditions are fully satisfied:

a/ The applicant carries out procedures for registration of an invention at Vietnam's state management agency in charge of industrial property (the national phase) under the PCT's provisions within 31 months from the international filing date or from the priority date (if the priority right is claimed in the application);

b/ The applicant pays industrial property fees and charges according to the provisions of law.

3. A PCT application originating from Vietnam must be made in English or Russian and satisfy the PCT's requirements on the form and contents. Applicants may file their applications with the state management agency in charge of industrial property or with the International Office of the World Intellectual Property Organization (WIPO).

4. The Science and Technology Ministry specifies the form and contents of, order and procedures for processing PCT applications from other countries designating or selecting Vietnam, and PCT applications originating from Vietnam.

Article 12.- Mark international applications

1. In this Article, “Madrid applications” are referred to the applications for international registration of marks filed under the Madrid Agreement or the Madrid Protocol, including:

a/ Applications originating from other member countries of the Madrid Agreement or the Madrid Protocol for protection of marks in Vietnam (hereinafter referred to as Madrid applications designating Vietnam);

b/ Applications filed in Vietnam for protection of marks in other member countries of the Madrid Agreement or the Madrid Protocol (hereinafter referred to as Madrid applications originating from Vietnam).

2. After being announced by the International Office of the World Intellectual Property Organization (WIPO), a Madrid application designating Vietnam shall go through the content examination like an application for mark registration filed according to national formalities.

For a mark accepted for protection, the state management agency in charge of industrial property shall issue and publish a decision on acceptance for protection of an internationally registered mark in the Industrial Property Official Gazette. At the request of an internationally registered mark owner, the state management agency in charge of industrial property issues a certificate of protection in Vietnam of internationally registered mark.

3. Vietnamese organizations or individuals may exercise the right to international registration of marks under the Madrid Agreement or the Madrid Protocol according to the following regulations:

a/ To file applications under the Madrid Agreement, if the protection is claimed in a member country of the Madrid Agreement, provided that they have been granted mark protection titles in Vietnam;

b/ To file applications under the Madrid Protocol, if the protection is claimed in a country which is a member of the Madrid Protocol but not a member of the Madrid Agreement, provided that they have filed applications for mark registration in Vietnam.

4. The state management agency in charge of industrial property receives Madrid applications originating from Vietnam.

5. The Science and Technology Ministry specifies the form and contents of, the order and procedures for processing of Madrid applications.

Article 13.- Establishment of industrial property rights on the basis of treaties on mutual protection recognition

1. When a treaty concerning industrial property to which Vietnam is a contracting 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 members are recognized and protected in Vietnam.

Industrial property rights are protected within the scope and term of protection compliant with the provisions of treaties without having to complete the registration procedures specified in the Law on Intellectual Property.

2. The Science and Technology Ministry publishes all necessary information relevant to the industrial property rights recognized and protected in Vietnam under treaties.

Article 14.- Complaints about the registration of industrial property rights and settlement thereof

1. Applicants and all organizations and individuals with rights and interests directly related to decisions or notices concerning the processing of industrial property registration applications, which are issued by the state management agency in charge of industrial property, may lodge complaints with state management agency in charge of industrial property or initiate lawsuits at court according to the provisions of the Law on Intellectual Property and relevant laws. The time limit for settlement of complaints is specified in Clause 5 of this Article.

2. Upon the expiration of the time limit for settlement of complaints about decisions or notices concerning industrial property (first-time complaints) by agencies issuing such decisions or notices, if complaints are not settled or complainants disagree with complaint-settling decisions of these agencies, the complainants or persons with rights and interests directly related to those decisions may further lodge their complaints (second-time complaints) with the Science and Technology Minister or initiate lawsuits at court. Upon the expiration of the time limit for settlement of second-time complaints mentioned in Clause 5 of this Article, or if complainants disagree with complaint-settling decisions of the Science and Technology Minister, such complainants or persons with rights and interests directly related to those decisions may initiate lawsuits at court.

3. Contents of complaint must be presented in writing, clearly stating the full name and address of the complainant; serial number, signing date and contents of the complained notice or decision; contents of complaint, arguments and evidence on which the complaint is based; specific requests for the modification or annulment of the relevant notice or decision.

4. The right to complaint may only be exercised within the following time limit which does not include the period of time when the complainant cannot exercise his/her right to complaint due to any objective obstacle:

a/ The time limit for lodging a first-time complaint shall be 90 days from the date the person having the right to complaint receives or knows about the decision or notice on the processing of his/her industrial property registration application;

b/ The time limit for lodging a second-time complaint shall be 30 days from the date of expiration of the time limit for settlement of the first-time complaint specified in Clause 5 of this Article if by that date the first-time complaint is not settled, or from the date the person having the right to complaint receives or knows about the decision on settlement of the first-time complaint.

5. Within 10 days from the date of receipt of a complaint about the grant, amendment, invalidation, annulment or prolongation of validity of a protection title, the person competent to settle that complaint shall issue a notice of acceptance or rejection of such complaint, clearly stating the reason(s) for rejection.

The time limit for settlement of complaints complies with the provisions of law on complaints.

The period of time for amending or supplementing complaint dossiers shall not be included in the time limit for settlement of complaints.

6. The complaint-settling order and procedures comply with the provisions of law on complaints.

Chapter III

HOLDERS AND CONTENTS OF, AND LIMITATIONS ON, INDUSTRIAL PROPERTY RIGHTS

Article 15.- Industrial property rights holders

1. Industrial property rights holders include organizations and individuals being owners of industrial property objects specified in Article 121 of the Law on Intellectual Property or organizations and individuals being assigned the industrial property rights by owners, or authors of inventions, industrial designs or layout designs specified in Article 122 of the Law on Intellectual Property.

2. When a protection title for an invention, an industrial design, a layout design or a mark is commonly granted to more than one organizations or individuals according to the provisions of Clause 3, Article 86; Clause 5, Article 87; and Clause 2, Article 90 of the Law on Intellectual Property, the industrial property rights shall be under joint ownership of those organizations or individuals. Co-owners shall exercise the joint ownership according to the provisions of the civil law.

Article 16.- Scope of industrial property rights

1. Scope of industrial property rights to an invention, an industrial design, a layout design, a mark or a geographical indication is determined according to the scope of protection stated in the relevant protection title.

2. Scope of rights to a trade name is determined according to the scope of protection of the trade name, including the trade name, business domain and territory of business in which the trade name is lawfully used by the entity bearing such trade name. The registration of an appellation of a business organization or individual involved in business procedures shall not be considered the use of that appellation but merely constitute a condition for the use of that appellation to be considered lawful.

3. Scope of rights to a business secret is determined according to the scope of protection of that business secret, covering a combination of information constituting the business secret, arranged in an accurate order and sufficient enough for utilization.

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

Article 17.- Respect for previously established rights

1. Industrial property rights of an organization or individual may be invalidated or banned from exercise if they conflict with previously established intellectual property rights of another organization or individual.

2. The Planning and Investment Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, guiding the naming of enterprises in business registration procedures to prevent the infringement of rights to marks, trade names or geographical indications already under protection.

Article 18.- Rights of authors of inventions, industrial designs or layout designs

1. The moral rights of authors provided for in Clause 2, Article 122 of the Law on Intellectual Property are protected for an infinite term.

2. The right of authors to receive remunerations provided for in Clause 3, Article 122 of the Law on Intellectual Property is protected throughout the term of protection of their inventions, industrial designs or layout designs.

3. Unless otherwise agreed between the owner and the author, the payment of remuneration must be made within 30 days as from the date of receipt by the owner of the licensing fee or the proceeds from each period of use of his/her invention, industrial design or layout design. If the invention, industrial design or layout design is used continuously, each payment installment must be made within six months after the completion of the preceding installment.

4. The Finance Ministry coordinates with the Science and Technology Ministry in detailing and guiding the method for determination of proceeds from the use of inventions, industrial designs or layout designs.

Article 19.- Exercise of the state ownership right to geographical indications

1. Agencies and organizations which are entitled to manage geographical indications defined in Clause 4, Article 121 of the Law on Intellectual Property include:

a/ The People's Committee of the province or centrally run city where exists the geographical area subject to the geographical indication, if the geographical indication concerns one locality;

b/ The People's Committee of a province or centrally run city which is an authorized representative of the People's Committees of other provinces or centrally run cities where exists the geographical area subject to the geographical indication, if the geographical indication concerns more than one locality;

c/ Agencies or organizations empowered by People's Committees of provinces or centrally run cities to manage geographical indications, if those agencies or organizations represent interests of all organizations and individuals granted the right to use such geographical indications according to the provisions of Clause 4, Article 121 of the Law on Intellectual Property.

2. Organizations managing geographical indications are entitled to exercise the rights of owners to geographical indications provided for in Clause 2, Article 123 and Article 198 of the Law on Intellectual Property.

3. The Agriculture and Rural Development Ministry, the Fisheries Ministry and the Industry Ministry assumes the prime responsibility for, and coordinates with the People's Committees of provinces or centrally run cities in, identifying specialties, features of products, processes of production of specialties bearing geographical indications managed by ministries, branches or localities.

4. People's Committees of provinces or centrally run cities carry out the registration and organize the management of geographical indications used for local specialties.

Article 20.- Keeping of confidentiality of test data

The Health Ministry and the Agriculture and Rural Development Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, guiding the keeping of confidentiality of test data in the procedures of registration for circulation of products specified in Article 128 of the Law on Intellectual Property.

Article 21.- Use of industrial property objects

1. Acts of circulating products specified at Point d, Clause 1; Point b, Clause 2; Point b, Clause 5; and Point b, Clause 7, Article 124 of the Law on Intellectual Property include acts of selling, displaying for sale or transporting products.

2. Products lawfully put on the market, including overseas markets, specified at Point b, Clause 2, Article 125 of the Law on Intellectual Property mean products already put on the domestic or overseas market by owners, licensees, including licensees under compulsory licensing decisions, or persons with the right to prior use of industrial property objects.

Article 22.- Use of inventions on behalf of the State

1. The use of inventions on behalf of the State for public and non-commercial purposes or in service of national defense, security, disease prevention and treatment, nutrition for the people, or to meet other urgent social needs specified in Clause 1, Article 133 of the Law on Intellectual Property is effected by ministries and ministerial-level agencies or by other organizations and individuals designated by them under their decisions on compulsory licensing of the inventions specified at Point a, Clause 1, Article 145 and the second paragraph, Clause 1, Article 147 of the Law on Intellectual Property.

2. Procedures for issuing decisions on compulsory licensing of inventions in case of use of inventions on behalf of the State comply with the regulations of the branch-managing ministries.

Article 23.- Obligation to use inventions

1. When there arise needs of national defense, security, disease prevention and treatment and nutrition for the people or other urgent social needs but holders of the exclusive right to use inventions fail to perform the obligation to manufacture protected products or apply protected processes to satisfy those needs according to the provisions of Clause 1, Article 136 and Clause 5, Article 142 of the Law on Intellectual Property, the Science and Technology Ministry may license such inventions to other organizations or individuals by issuing decisions on compulsory licensing of inventions according to the provisions of Point b, Clause 1, Article 145 and the first paragraph, Clause 1, Article 147 of the Law on Intellectual Property.

2. When needs of national defense, security, disease prevention and treatment and nutrition for the people or other urgent social needs are satisfied by imported products or products manufactured by licensees of inventions under licensing contracts, holders of the exclusive right to use inventions shall not perform the obligation to manufacture protected products or apply protected processes mentioned in Clause 1 of this Article.

Chapter IV

ASSIGNMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 24.- Compensation levels for the right to use inventions licensed under compulsory decisions

1. Compensation level for the right to use an invention licensed under a compulsory decision specified at Point d, Clause 1, Article 146 of the Law on Intellectual Property is determined according to the economic value of the licensed use right and based on the following elements:

a/ Invention licensing price under the contract;

b/ Funds invested in the creation of the invention, with the support fund from the state budget (if any) taken into account;

c/ Profits earned from the use of the invention;

d/ Remaining valid term of the protection title;

e/ Necessity of the invention licensing;

f/ Other elements directly decisive to the economic value of the licensed use right.

2. Compensation level does not exceed 5% of the net selling price of products manufactured under the invention, if the principle specified in Clause 1 of this Article is complied with.

3. Agencies competent to issue decisions on compulsory licensing of inventions may set up valuation councils or solicit expertise opinions to determine compensation levels specified in Clause 1 of this Article.

Article 25.- Dossier and procedure for licensing of inventions under compulsory decisions

1. Except for the case specified in Clause 2 of this Article, the Science and Technology Ministry specifies the form and contents of the dossier of request for licensing of inventions specified in Clause 1, Article 147 of the Law on Intellectual Property, and stipulates and organizes the implementation of procedures for receiving and handling requests for licensing of inventions.

2. The Health Ministry and the Agriculture and Rural Development Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, guiding and organizing the implementation of procedures for compulsory licensing of inventions and use of inventions on behalf of the State to satisfy needs of health care and nutrition for the people.

Article 26.- Dossier and procedure for registration of contracts for assignment of industrial property rights

1. The Science and Technology Ministry specifies the forms and contents of various dossiers for registration of contracts for assignment of industrial property rights specified in Article 149 of the Law on Intellectual Property.

2. The Science and Technology Ministry specifies the procedures for receiving and handling dossiers for registration of contracts for assignment of industrial property rights.

Chapter V

INDUSTRIAL PROPERTY REPRESENTATION

Article 27.- Programs on industrial property law training

1. The Science and Technology Ministry assumes the prime responsibility for, and coordinates with the Education and Training Ministry and the Justice Ministry in, specifying programs on industrial property law training mentioned in Clause 3, Article 155 of the Law on Intellectual Property.

2. Individuals are considered having graduated from a training course on industrial property law specified at Point d, Clause 2, Article 155 of the Law on Intellectual Property Law in the following cases:

a/ They are authors of university graduation theses or postgraduate theses on industrial property;

b/ They have graduated from training courses on industrial property accredited by the Science and Technology Ministry.

Article 28.- Examination of industrial property representation profession

1. The examination of industrial property representation profession shall be conducted to assess the capability to apply industrial property law to solving specific matters related to the establishment and protection of industrial property rights.

2. Contents of examination of industrial property representation profession include the skills of application of industrial property law to handling circumstances related to the protection of industrial property objects.

3. The Science and Technology Ministry guides and organizes the examination of industrial property representation profession.

Article 29.- Grant and withdrawal of industrial property representation service practice certificates

1. Industrial property representation service practice certificates are granted to individuals who satisfy the conditions specified in Clause 2, Article 155 of the Law on Intellectual Property at their requests after they pay fees and charges set by law.

2. An industrial property representation service practice certificate is withdrawn in the following cases:

a/ The grantee of the industrial property representation service practice certificate has quitted the job of industrial property representation;

b/ The grantee of the industrial property representation service practice certificate no longer satisfies the conditions specified in Clause 2, Article 155 of the Law on Intellectual Property;

c/ The grantee of the industrial property representation service practice certificate seriously violates the provisions of Clause 3, Article 152 and Article 153 of the Law on Intellectual Property;

d/ The grantee of the industrial property representation service practice certificate makes a serious professional mistake or commits a serious violation while practicing industrial property representation, causing damage to interests of the State and society;

e/ The grantee of the industrial property representation service practice certificate takes advantage of his/her capacity as an industrial property representative to conduct activities beyond the scope of industrial property representation service specified in Clause 1, Article 151 of the Law on Intellectual Property.

3. The Science and Technology Ministry grants and withdraws industrial property representation service practice certificates.

4. Organizations which fully satisfy the conditions specified in Article 154 of the Law on Intellectual Property are recorded as industrial property representation service organizations in the national register of industrial property representatives and published in the Industrial Property Official Gazette at their request and after they pay the set fees and charges.

5. An industrial property representation service organization has its name deleted from the national register of industrial property representatives and such deletion is published in the Industrial Property Official Gazette in the following cases:

a/ It no longer provides industrial property representation services;

b/ It no longer fully satisfies the conditions specified in Article 154 of the Law on Intellectual Property Law;

c/ It seriously violates the provisions of Clause 3, Article 152 and Article 153 of the Law on Intellectual Property;

d/ It makes a serious professional mistake or commits a serious violation while providing industrial property representation services, causing damage to interests of the State and society;

e/ It takes advantage of its capacity as an industrial property representative to conduct activities beyond the scope of industrial property representation service specified in Clause 1, Article 151 of the Law on Intellectual Property.

6. In the cases of certificate withdrawal or name deletion specified at Points c, d and e, Clause 2 or Points c, d and e, Clause 5 of this Article, requests for re-grant of industrial property representation service practice certificates or renewal of recordings of industrial property representation service organizations in the national register of industrial property representatives are considered three years after the withdrawal of certificates or deletion of names.

Chapter VI

MEASURES TO PROMOTE INDUSTRIAL PROPERTY ACTIVITIES

Article 30.- Training and fostering of human resources for industrial property activities

1. The Science and Technology Ministry assumes the prime responsibility for, and coordinates with the Education and Training Ministry and the Justice Ministry in, providing for in detail industrial property training and fostering contents and programs.

2. The Justice Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, organizing the elaboration of contents and programs of fostering of industrial property knowledge for judicial titles.

3. The Science and Technology Ministry assumes the prime responsibility for, and coordinates with concerned ministries and branches in, organizing the fostering of industrial property for persons engaged in state management, examination, assessment and handling of violations and infringements in industrial property.

4. The Education and Training Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, formulating programs and organizing the industrial property training in training establishments.

Article 31.- Assurance of industrial property information

1. The industrial property information system consists of relevant information on all industrial property objects protected in Vietnam and information selected according to intents or topics on foreign industrial property objects which is classified and arranged in a proper and convenient manner in order to facilitate the search (reference), distribution and use.

2. The Science and Technology Ministry shall organize the setting up and management of industrial property information storages, develop classification and search tools, guide methods for search and use of domestic and foreign industrial property information; organize the supply of information in an adequate, timely and accurate manner, assuring the accessibility to information storages for entities with demands for information in service of the establishment and protection of industrial property rights, the research, development and business.

3. Research and development subjects or projects are not funded by the state budget if references to invention information are not made right at the stage of drafting such subjects or projects or if such subjects or projects are identical to existing invention information, except for those aimed at experimental application or development of technical know-how to utilize existing inventions.

The Science and Technology Ministry shall organize the provision of services of searching for invention information at the request of agencies, organizations or individuals engaged in the formulation, approval or appraisal for acceptance of research and development subjects or projects funded by the State, if the requesters pay the searching service fee set by the Finance Ministry.

Article 32.- Accounting of expenses and prices related to industrial property

1. Expenses for the following purposes are regarded as reasonable expenses of enterprises:

a/ Expenses for the creation of inventions, industrial designs or layout designs; expenses for the designing of marks or logos of the enterprises;

b/ Expenses for the completion of procedures for registration, maintenance and renewal of the rights to inventions, industrial designs, layout designs, marks or geographical indications, including the completion of those procedures in foreign countries;

c/ Expenses for the application of measures to protect the confidentiality of business secrets or to protect the rights to inventions, industrial designs, layout designs, marks or geographical indications;

d/ Expenses for the payment of remunerations to authors;

e/ Expenses for the purchase of the ownership right or the right to use inventions, industrial designs, layout designs, marks or business secrets.

2. Inventions, industrial designs, layout designs, marks, trade names or business secrets and effective relevant industrial property rights created by, transferred or assigned to, enterprises constitute intellectual assets of such enterprises and are accounted into their total assets.

3. The Finance Ministry assumes the prime responsibility for, and coordinates with the Science and Technology Ministry in, guiding the method of accounting industrial property-related

expenses and the method of valuating intellectual assets specified in Clauses 1 and 2 of this Article.

Article 33.- Extension of the scope of use of state-owned inventions, industrial designs or layout designs

1. When protection title holders' capability to utilize state-owned inventions, industrial designs or layout designs fails to satisfy social needs, other state organizations may request protection title holders to license such inventions, industrial designs or layout designs to them on the following conditions:

a/ The licensed right to use such inventions, industrial designs or layout designs is non-exclusive and shall not be sub-licensed to others;

b/ The scope of use of inventions, industrial designs or layout designs by licensees does not affect the utilization of such inventions, industrial designs or layout designs to the full capability of protection title holders.

c/ When inventions, industrial designs or layout designs are used for non-commercial purposes, the licensing fee to be paid by invention, industrial design or layout design licensees to protection title holders is equal to 50% of the amount payable by licensees which are not state organizations in order to receive the right to use such inventions, industrial designs or layout designs on other similar conditions.

2. The licensing of state-owned inventions, industrial designs or layout designs to state organizations specified in Clause 1 of this Article shall not affect the right of protection title holders to license such objects to other non-state organizations.

Article 34.- Encouragement of industrial property activities of social organizations and socio-professional organizations

Social organizations and socio-professional organizations operating in the domain of industrial property are entitled to enjoy favorable conditions for performing their function of providing social consultations and criticisms in intellectual property and promoting non-public social service activities in order to bring into full play their role in assisting operations of state agencies and supporting industrial property rights holders.

Article 35.- Other measures to encourage creative activities

The State encourages and sponsors activities of creating technologies by:

1. Sponsoring technical innovation contests.
2. Commending, rewarding and popularizing experience, creative methods, advanced models of creative labor.
3. Supporting activities of establishing and protecting industrial property rights to creative labor's achievements.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 36.- Transitional provisions

1. Industrial property registration applications filed with the National Office of Intellectual Property before January 1, 2006, continue to be processed in accordance with the provisions of the 1995 Civil Code and its guiding documents.

2. Industrial property registration applications filed with the National Office of Intellectual Property in the period from January 1, 2006, to July 1, 2006, are also processed in accordance with the provision of the 1995 Civil Code and its guiding documents, and of which:

a/ An invention registration application may be used to request the grant of a utility solution patent, and in this case that application is processed like a utility solution registration application;

b/ Geographical indication registration applications are processed like applications for registration of appellations of origin of goods.

3. From January 1, 2006, to June 30, 2006, the rights and obligations provided for in protection titles granted under the 1995 Civil Code and the 2005 Civil Code are effective under the 2005 Civil Code and the provisions of the documents guiding the implementation of the 1995 Civil Code which are not contrary to those of the 2005 Civil Code.

4. Within one year after this Decree takes effect, organizations and individuals lawfully providing industrial property representation services under the 1995 Civil Code and its guiding documents may continue operating like those satisfying the business conditions and practice conditions specified in Articles 154 and 155 of the Law on Intellectual Property.

Article 37.- Effect of the Decree

This Decree takes effect 15 days after its publication in “CONG BAO.”

All previous provisions which are contrary to this Decree are hereby annulled.

Article 38.- Responsibilities to guide the implementation

1. The Science and Technology Minister shall guide the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies and government-attached agencies and presidents of provincial/municipal People’s Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung