

THE GOVERNMENT

No. 122/2010/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness

Hanoi, December 31, 2010

DECREE
AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE GOVERNMENT'S
DECREE NO. 103/ 2006/ND-CP OF SEPTEMBER 22, 2006, DETAILING AND GUIDING 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. November 29, 2005 Law on Intellectual Property, which was amended and supplemented on June 19, 2009:

At the proposal of the Science and Technology Minister;

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 103/2006/ND-CP of September 22. 2006, detailing and guiding a number of articles of the Law on Intellectual Property regarding industrial property

1. To amend Point h, Clause 2, Article 3 as follows:

"h/ To manage geographical indications belonging to their localities, including geographical names and other signs indicating the geographical origin of local specialties;"

2. To amend Clauses 3 and 4 of, and add Clause 5 to, Article 19 as follows:

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

4. People's Committees of provinces or centrally run cities shall file applications for registration and organize the management of geographical indications used for local specialties and license the registration of collective marks or certification marks for geographical names and other signs indicating the geographical origin of local specialties.

5. The Ministry of Science and Technology shall specify criteria for identifying geographical names and other signs indicating the geographical origin of products."

3. To add the following Chapter IIIa:

"Chapter IIIa. CONFIDENTIAL INVENTIONS

Article 23a. Confidential inventions; confidential invention protection titles; contents of and limitations on rights to confidential inventions

1. Inventions which are classified by competent state agencies as state secrets in the field of national defense and security under the law on protection of state secrets are referred to as confidential inventions.

2. Confidential inventions may only be granted confidential invention patents or confidential utility solution patents.

3. Confidential invention registration applications, confidential invention patents and confidential utility solution patents may not be disclosed and must be kept confidential under the law on protection of state secrets.

4. The utilization and licensing of confidential inventions and the assignment of the right to file applications and the right to own confidential inventions must be permitted by competent state agencies under the law on protection of state secrets.

5. The Minister of Public Security and the Minister of National Defense may utilize or assign organizations or individuals to utilize confidential inventions for the national defense or security purpose under Articles 145.146 and 147 of the Law on intellectual Property.

6. After a confidential invention is disclosed by a competent agency under the law on protection of state secrets, its registration application and protection title shall be handled as follows:

a/ The confidential invention application shall be further processed like an invention application;

b/ The confidential invention patent or confidential utility solution patent shall be converted into an invention patent or utility solution patent and published in the Industrial Property Official Gazette and recorded in the National Register of Inventions.

Article 23b. Security control of inventions before their overseas registration

1. Vietnamese organizations and individuals may only register their confidential inventions in countries in which regulations on protection of confidential inventions are available and shall obtain permission of competent agencies under Clause 2, Article 23c of this Decree.

2. Inventions of Vietnamese organizations and individuals and inventions created in Vietnam will not be protected by the Vietnamese State if applications for industrial property protection registration thereof have been filed overseas in contravention of the following provisions on security control:

a/ Applications for industrial property protection may only be filed overseas when invention registration applications have been filed in Vietnam and the time limit of 6 months from the filing date has expired, except the case specified at Point b of this Clause;

b/ Overseas filing of applications for industrial property protection is not allowed when inventions are classified confidential under the law on protection of state secrets as notified by competent agencies.

Article 23c. Identification and disclosure of confidential inventions; establishment and transfer of rights to confidential inventions

1. The identification and disclosure of confidential inventions shall be conducted by the Ministry of National Defense and the Ministry of Public Security under the law on protection of state secrets.

2. The Ministry of Public Security shall assume the prime responsibility for, and coordinate with the Ministry of National Defense and the Ministry of Science and Technology in, specifying procedures for identification and disclosure of confidential inventions; protection of confidential inventions; procedures for examination of applications and grant of confidential invention protection titles; management of utilization, licensing of confidential inventions, and overseas registration of industrial property protection of confidential inventions in accordance with the law on protection of state secrets and the law on intellectual property."

4. To amend and supplement Article 29 as follows:

"**Article 29.** Grant and revocation of industrial property representation service practice certificates

1. Industrial property representation service practice certificates shall be granted to applying individuals who satisfy the conditions specified in Clause 2, Article 155 of the Law on Intellectual Property after they pay prescribed fees and charges.

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

a/ The certificate holder has quitted the job of industrial property representation;

b/ The certificate holder no longer satisfies the conditions specified in Clause 2. Article 155 of the Law on Intellectual Property;

c/ The certificate holder is deprived of the right to use the certificate under a competent state agency's decision.

3. An application for re-grant of an industrial property representation service practice certificate after this certificate is revoked under Point c. Clause 2 of this Article may only be considered upon the expiration of the duration of deprivation of the right to use this certificate.

4. The Ministry of Science and Technology shall grant and revoke industrial property representation service practice certificates.

5. To add the following Article 29a:

"Article 29a. Recording and deletion of names of organizations which fully satisfy the conditions for providing industrial property representation services

1. Organizations which fully satisfy the conditions specified in Article 154 of the Law on Intellectual Property which are detailed in Clauses 2, 3 and 4 of this Article shall be 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 prescribed fees and charges.

2. Organizations defined in Clause 1, Article 154 of the Law on Intellectual Property include:

a/ Enterprises established and operating under the law on enterprises;

b/ Cooperatives and unions of cooperatives established and operating under the law on cooperatives;

c/ Law-practicing organizations established and operating under the law on lawyers, excluding subsidiaries of foreign law-practicing organizations, wholly foreign-owned limited liability law firms, and limited liability law firms in the form of joint ventures between Vietnamese law-practicing organizations and foreign law-practicing organizations;

d/ Scientific and technological service organizations established and operating under the law on science and technology.

3. Subsidiaries and other dependent units of organizations specified in Clause 2 of this Article may only provide industrial property representation services in the name of their principals.

4. At-law representatives of industrial property representation service organizations or persons belonging to organizations authorized by these representatives to provide industrial property representation services must satisfy the conditions for provision of industrial property representation services specified in Clause 1, Article 155 of the Law on Intellectual Property.

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

a/ It terminates the provision of industrial property representation services:

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

6. To add the following Clauses 2a, 2b and 3a to Article 36:

"2a. Industrial property registration applications filed with the National Office of Intellectual Property in the period from July 1, 2006, through December 31, 2009, shall be processed in accordance with the 2005 Law on Intellectual Property and guiding documents.

2b. Industrial property registration applications filed with the National Office of Intellectual Property from January 1, 2010, on, shall be processed in accordance with the 2009 Law Amending and Supplementing a Number of Articles of the intellectual Property and guiding documents.

3a. The National Office of Intellectual Property shall grant registration certificates of geographical indications for appellations of origin of Goods already registered in accordance with the provisions of the Law on Intellectual Property regarding registration of geographical indications. All rights and obligations of industrial property right holders related to appellations of origin of goods comply with the provisions of the Law on Intellectual Property regarding geographical indications."

Article 2. Effect

This Decree takes effect on February 20, 2011.

Article 3. Implementation guiding responsibility

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

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of provincial-level People's Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung