

Decision on Industrial Designs

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LAO PEOPLE'S DEMOCRATIC REPUBLIC
Peace Independence Democracy Unity Prosperity

Ministry of Science and Technology

No. /MOST
Vientiane,

Decision
on
Industrial Designs

- Based on Law No. 01/NA dated December 20, 2011 on Intellectual Property;
- Based on requirements for interpretation of this Law; and .
- Based on the proposal of the Intellectual Property Department;

The Minister of Science and Technology issues the following Decision:

SECTION I
General Provisions

Article 1. Objective.

This Decision is set forth for implementing the Law on Intellectual Property and provides procedures on protection relating to industrial designs and uniformly sets up the rules relating to the filing applications for industrial designs throughout the Lao People's Democratic Republic.

Article 2. Competent Authority.

1. The Department of Intellectual Property in the Ministry of Science and Technology shall be the competent authority for determining whether an application for protection of an industrial design meets the legal requirements set forth in the Intellectual Property Law and this Decision. The Department shall have such other duties as may be provided by Law or Decision.

2. The Department shall maintain the record book on industrial designs. Records defined in this Decision shall be recorded in those record books.

3. The Department shall publish in the official industrial property gazette information as defined in this Decision. An official industrial property gazette may be established separately for each type of intellectual property if necessary.

4. In carrying out its responsibilities, the Department shall have the authority to take such actions as may be required to prevent or correct mistakes on matters within its responsibility, and to ensure the orderly operations of the Department, and to grant extensions of time in appropriate cases, provided all such actions are consistent with the Intellectual Property Law and this Decision and with any international agreement or convention to which the Lao PDR is a party.

5. The Department shall appoint a Board of Appeals and such other administrative boards or committees as may be needed to implement the Intellectual Property Law and this Decision.

6. All situations not specifically provided for in this Decision will be decided in accordance with the merits of each situation by or under the authority of the Director-General, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. In an extraordinary situation, when justice requires, any requirement of the this Decision which is not a requirement of the Intellectual Property Law or other applicable Law may be suspended or waived by the Director-General or the Director-General's designee, on such person's own initiative, or on request of the interested party, subject to such other requirements as may be imposed.

Article 3. Definitions.

In addition to definitions defined in Article 3 of the Law on Intellectual Property No. 01/NA dated December 20, 2011, for purposes of the Intellectual Property Law and this Decision, the following terms shall have the meanings given below, unless the context otherwise requires:

Applicant means one or more persons, legal entity or organization that has applied to obtain an industrial design, or such person's successor in interest, or in the context of an objection or application for cancellation, the person, group of persons, or legal entity that has filed the objection or applied for the cancellation, or such person's successor in interest.

Application means a request to register an industrial design, or in the context of an objection or cancellation, a request to cancel or modify all or part of an industrial design registration.

Assign means to transfer all rights in an item of intellectual property to another person. The person who makes the transfer is the **assignor** and the person who receives the rights is the **assignee**.

Assignment means the legal document by which an assignment is made.

Class means, in the context of industrial designs, a class of an international classification. The Department shall provide by notice for such classifications.

Commercial purpose, as used in the Intellectual Property Law, means that an act is carried out to receive money or any other thing of value or that an act is carried out in connection

with an undertaking to increase the value or profitability of the undertaking.

Court means,

- 1) for purposes of filing a civil action to enforce intellectual property rights, the Commercial Chamber of a regional People's Court, provincial People's Court, or capital People's Court, where the right holder of the intellectual property rights may file in accordance with the Civil Procedure Law.
- 2) for purposes of appealing any decision related to enforcement of intellectual property rights, the relevant Appeals Court or People's Supreme Court where an appeal has been filed in accordance with the Civil Procedure Law.
- 3) for purposes of filing an administrative appeal from a holding of the Intellectual Property Department or one of its units, the Commercial Chamber of the capital People's Court.

Department means the Department of Intellectual Property of the Ministry of Science and Technology.

Designer means the natural person or group of persons who, individually or jointly, created the design that is the subject of an application for protection as an industrial design.

Director General refers to the Director General of the Department of Intellectual Property.

Divide or **division**, in the context of an action with regard to an application, means a procedure by which the applicant converts a single application into two or more applications, each of which relates to a portion of the original application. A **divisional application** is an application that results from such procedure.

Effective filing date means, for purposes of examination or determination of which of two or more parties is entitled to protection, the earlier of an application's actual filing date in the Lao PDR; its priority date or date of temporary protection based on the display of goods at an internationally recognized exhibition, as applicable; or where an application is a divisional application or is otherwise entitled to the filing date of an earlier application, such filing date, priority date, or date of exhibition of such earlier application, as applicable.

Independent designer means a natural person who has created an industrial design, where such item was not made under conditions that vest rights in another person, and such designer has not assigned rights to such industrial design, and is under no obligation to make such an assignment.

Individual means a natural person.

Legal entities or organization means an entity of a type that is legally recognized to transact business in the place of its origin and includes a company, state or governmental entity, association or collective organization, or other legal person.

License means an agreement granting permission to carry out one of the exclusive rights of an intellectual property owner and includes an agreement not to bring legal action against the person receiving the license for such acts provided they are consistent with the terms of the

agreement.

Licensee means the person or persons to whom the intellectual property owner grants a license.

Licensor means a person who grants a license.

Minister refers to the Minister of Science and Technology.

Paris Convention means the Paris Convention for the Protection of Industrial Property.

Power of attorney means a written document by which a principal authorizes one or more persons to act on his or her behalf.

Practitioner means an attorney or agent who regularly engages in practice before the Department.

Principal means a person who executes a power of attorney designating one or more persons to act on his or her behalf in connection with an application or other proceedings before the Department.

Prosecution refers to all acts intended to lead to the allowance of an application.

Regular national filing means any filing that is adequate to establish the date on which an application was filed in the country concerned, whatever may be the subsequent fate of the application.

Representation Address means the correspondence address for all practitioners authorized in a single power of attorney.

Representative means an attorney or agent who is authorized to represent an applicant or intellectual property owner or other person with regard to one or more proceedings before the Department.

Restrict or **restriction** in the context of an application refers to an action limiting the subject matter of the application.

Revoke means, in connection with a Power of Attorney, the cancellation by the principal of the authority previously given to a practitioner or other person to act on behalf of the principal.

The terms **holder** or **owner**, or **rights holder** or **rights owner**, as appropriate, are used interchangeably to refer to the person who has been granted an industrial design, or who is legally entitled to rights in an industrial design without regard to whether an industrial design has been granted thereon, or to such person's assignee or successor in interest or other person who has received such rights by law.

Specification refers to the portion of an industrial design or application therefor that describes the invention or utility application in words, together with other information useful in understanding the industrial design.

Article 4. Protection Available; International Agreements.

1. Protection for any industrial design shall be available in accordance with the Intellectual Property Law and procedures set forth in this Decision.
2. In case of any conflict between the provisions of this Decision and those of any treaty or international agreement to which the Lao PDR is a party or has mutually signed, the provisions of the international treaties or agreements shall be implemented.
3. Requirements in connection with international applications shall be as provided in this Decision except as otherwise provided in accordance with the provisions of any international agreement of which the Lao PDR is a member.

Article 5. Industrial Designs Eligible for Protection

Every industrial design is eligible for protection by an industrial design registration if it is consistent with Article 15 of the Law on Intellectual Property and is not ineligible for protection under Article 22 of the Law on Intellectual Property.

For the purpose of this Decision, an industrial design refers to the appearance of a product dictated by its form, shape, pattern, or colors and not dictated by its function or by technical considerations.

Article 6. Persons Eligible for Protection.

1. The persons described in Article 26 of the Intellectual Property Law are eligible to obtain protection for their industrial designs, and to file an application for an industrial design registration, to enforce their rights administratively or through the courts, and to undertake any other actions pursuant to the Law on Intellectual Property or this Decision, subject, however, to paragraph 2 of this article.
2. An applicant without business premises or residence in the Lao PDR shall appoint a representative in the Lao PDR in accordance with the requirements of this Decision.

Article 7. Language.

1. An application for an industrial design registration and any accompanying material, may be filed in either the Lao language or in the English language. Such filing will be sufficient to establish a filing date or date of submission for the application or other materials, provided however, that for any application or document filed or submitted in English, the applicant must, within 90 days of such filing or submission, supply a translation into the Lao language. Such translation must be certified to be a correct translation as provided below.
2. Application forms for industrial designs are available in the Lao and English languages. An application shall be deemed to comply with the language requirements of Article 37 of the Intellectual Property Law where the application is made on the relevant form, provided that documents that accompany the application form must satisfy the language requirements of this article. The Department may apply the same provision to any other standard form.

3. Any other correspondence with the Department and accompanying material shall be in the Lao language or the English language, provided that where correspondence is submitted in the English language, a translation into the Lao language shall be submitted within 90 days of the submission, or not less than 30 days from notification by the Department to supply a Lao translation, whichever period is longer. For correspondence and documents submitted under this paragraph, the Department shall have the authority to grant extensions of time in appropriate circumstances and on such conditions as may be determined by the Department.

4. Each translation shall be certified by the translator, or by another person who has personally reviewed the translation, to be a true and correct translation of the translated document.

5. Where a translation is unclear or otherwise inadequate for the purposes for which the document is submitted, or where the Department reasonably believes that the translation does not correctly represent the original, the Department may require a second translation, at applicant's expense.

SECTION II **Application Procedures**

Article 8. Initial Procedures; Filing Date.

1. Any person who is eligible for protection as described in Article 6 of this Decision, and who is entitled to file an application as described in Article 31 of this Decision, and who wishes to obtain an industrial design registration may file an application with the Department on the prescribed forms following the procedures described below.

2. An application is filed by presenting to the Department a copy of the application, together with any required documents. The Department will conduct an initial review of the papers submitted to determine the nature of the application being submitted and whether the papers contain all of the documents required for the relevant application.

3. If the Department finds that the papers contain all of the required documents, or that it meets the minimum requirements for obtaining a filing date, as described in this Decision, the Department will provisionally accept the application for filing, issue a filing number, and provide the applicant or the applicant's representative with a filing receipt that shows the name and address of the applicant and applicant's representative if applicable; the nature of the application, that is, whether it is an application for an industrial design registration, and the title of the subject of the application; date of submission; and the filing number.

4. Where the procedures of paragraph 3 of this article have been completed, the applicant or applicant's representative shall present the receipt to the Finance Division under the Cabinet of the Ministry and pay the applicable fee in accordance with the Presidential Decree on Fees. The Finance Division shall accept the fee and issue a receipt showing payment of the fee, the date and amount paid, and other information sufficient to associate the fee payment with the application and its filing number. It is the responsibility of the applicant to ensure that the proper fees are paid, as no refunds will be made for an applicant where filing procedures are not completed or where the applicant mistakenly pays a fee in an incorrect amount.

5. If the Department finds that some of the minimum elements required for a filing date are missing, the Department will immediately notify the applicant or applicant's representative in writing to supply the missing items. The procedures of paragraph 2 of this article will be suspended until applicant submits the missing items. When such items are submitted, the Department will issue the receipt provided in paragraph 2 as of the date that it receives all of the items that constitute the minimum requirements for a filing date.

If applicant fails to submit the missing items within 90 days, the application will be considered to be abandoned, without prejudice to applicant's right to re-file.

6. Once fees have been paid in accordance with paragraph 3 of this article, the applicant or applicant's representative shall present the fee receipt from the Finance Division to the Department, which shall accord a filing date to the application.

7. An application that is accorded a filing date and serial number must also meet other requirements prescribed by Intellectual Property Law and this Decision. It is the applicant's responsibility to ensure that an application complies with all requirements for protection.

Article 9. General Requirements Relating to Applications.

1. To receive an industrial design registration, the applicant, the application, and its subject matter must satisfy all requirements of the Intellectual Property Law and of this Decision.

2. The Department will not issue advisory opinions regarding the likelihood that a particular industrial design or application therefore will satisfy the requirements of the Intellectual Property Law and this Decision, and the Department will not provide legal advice to applicants. However, the Department will perform a search of previously registered industrial designs upon request and subject to the payment of the relevant fee. An applicant who wishes to obtain information relevant to the likelihood of being able to obtain an industrial design registration is advised to obtain a search prior to filing and to consult an attorney or other representative regarding issues relevant to patentability.

3. As provided in Article 28 of the Intellectual Property Law, where more than one application is filed for the same subject matter, the industrial design shall be awarded on the basis of the application with the earliest effective filing date, provided such application otherwise satisfies the requirements for the protection requested.

4. Where more than one application is filed for the same or a similar industrial design, the Department will continue procedures for both applications until it is determined whether the application with the earlier effective filing date will be registered, at which time the Department will issue a refusal to the application with the later effective filing date on the basis of the registration of the application with the earlier effective filing date. If procedures for the application with the later effective filing date are completed before that time and it appears that such application is otherwise entitled to registration, the Department shall suspend procedures on such application until procedures are completed for the application with the earlier effective filing date.

Article 10. Examination for Formal Requirements.

1. An application that has been received and accorded a filing date as described in Article 15 of this Decision shall be examined to determine whether it is complete and complies with all formal requirements.
2. If the application is not complete or does not satisfy the formal requirements as described herein, the Department will notify the applicant of any requirements not satisfied and the period of time in which the applicant must meet the requirements.
3. If formal requirements are supplied to the Department within the time provided, the application will be accepted for substantive examination. If formal requirements are not satisfied within 60 days, the applicant will be advised that the application is considered to be abandoned.

Article 11. Substantive Examination Requirement.

1. An application for an industrial design registration that has satisfied formal requirements shall be subject to substantive examination, without request by the applicant and without the necessity to furnish copies of examination from another office, to determine whether the application meets the requirements for protection set forth in the Intellectual Property Law.
2. The Department shall conduct a substantive evaluation of the application in accordance with the relevant provisions of the Intellectual Property Law and this Decision and shall notify the applicant of any conditions, objections, or grounds for refusal of part or all of the rights for which the applicant has applied, or any conditions or restrictions thereon. The applicant will be given an opportunity to respond and, subject to any limitations provided in this Decision, to amend the application or provide supplementary information to respond to the communications from the Department. The Department may require additional information as needed. If the applicant fails to comply with this provision within 60 days from such notification, the application will be deemed to be abandoned, provided however that the Department may extend the time for complying with this provision for good cause shown by the applicant.

Article 12. Amendment During Examination.

At any time an application is pending before the Department but before the Department has granted an industrial design, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may amend the application, provided such amendment does not introduce technical information not included in the disclosure, including drawings, of the application as filed.

Article 13. Grant of Industrial Design; Publication.

1. Where the application complies with the requirements for protection as provided in the Intellectual Property Law and this Decision, the Department shall notify the applicant that the application is in condition for allowance and, unless additional fees are due, shall grant the industrial design registration. The Department will issue an industrial design certificate, record the grant, and publish information relating to the industrial design in the official industrial property gazette.

2. Additional fees shall be required where the applicant has requested a publication of the assignee's name and address, an early publication, or any republication other than that addressed by paragraph 4 of Article 38 of this Decision. If such additional fees are required, the Department shall notify the applicant to pay the prescribed fees and, when the applicant provides a receipt from the Finance Division showing payment of such fees, shall complete the procedures described in paragraph 1 of this article.

Article 14. Invalidity and Cancellation.

Any interested party that believes an industrial design is invalid may file an objection or cancellation proceeding against an industrial design as provided in Article 44 of the Intellectual Property Law or may file a cancellation action with the Courts pursuant to Article 136 of the Intellectual Property Law and consistent with Section VIII of this Decision. An objection or cancellation brought before the Department must be filed within five years of publication. A cancellation proceeding filed with the Court may be brought at any time during the term of the industrial design registration or may be raised thereafter during any proceeding relating to the enforcement of rights under the industrial design.

SECTION III Application Requirements

Article 15. Minimum Requirements for Filing Date; Provisional Acceptance of Application.

1. In determining whether an application to register an industrial design shall be provisionally accepted for filing in accordance with Article 8 of this Decision, the Department may accept as filed and issue a filing receipt allowing applicant to pay fees for any application that

- 1) Appears to be a request for an industrial design registration, regardless of whether it is presented on the required form;
- 2) Contains at least one drawing, photograph, or other image of the design; and
- 3) Contains the name and address of the applicant;

provided that to obtain an industrial design, all the requirements of Article 32 of the Intellectual Property Law and the requirements of this Decision must be satisfied within the times set for response by the Department.

2. For purposes of this article, the requirement of a description may be provisionally satisfied by a written description of the design, a drawing or other image, or a combination thereof, without inquiry as to whether such application actually provides an enabling description.

3. Applicants should note that the minimum requirements to obtain a filing date may not be sufficient to satisfy the requirement for an enabling disclosure, and that the application as filed will determine the scope of any amendments that may be permitted for an application to retain its filing date.

Article 16. Application Requirements.

1. An application to register an industrial design shall include the items enumerated in Article 32 of the Intellectual Property Law and such other information as may be required by the Department. The application shall be presented on the form provided. It shall include the items enumerated in Article 32 of the Intellectual Property Law and other information as set forth below, in substantially the order shown below:

- 1) Application on the form provided, together with a receipt for payment of fees.
- 2) If not provided on the application form, the
 - a) Name of the natural person or persons who invented the subject matter of the application, even if such industrial design is owned by another person or organization;
 - b) Nationality and residence, if any, of an applicant who is a natural person, or of all such persons, if more than one, and for a legal entity, the country of incorporation and place where such entity has a real and effective industrial presence, if any, unless such information is already disclosed on the application form;
 - c) Telephone and facsimile numbers and email or other information for electronic communication with the applicant and the applicant's representative, to the extent such items are available.
 - d) The title of the design, which must designate the particular article to which the industrial design relates.
 - e) The name of the natural person or persons who created the design, even if such design is owned by another person or organization.
 - f) The nationality and residence, if any, of an applicant who is a natural person, or of all such persons, if more than one, and for a legal entity, the country of incorporation and place where such entity has a real and effective industrial presence, if any.
 - g) Telephone and facsimile numbers and information for electronic communication with the applicant and the applicant's representative, to the extent such items are available.
- 3) An electronic copy of the documents submitted for filing, in a standard format that is accessible by the Department, provided, however, that the Department may waive this requirement for independent designers. The Department may, from time to time, issue a Notice regarding acceptable electronic format for such documents.
- 4) A list of items annexed to the application.

2. In addition to the application requirements of paragraph 1 of this article, the applicant shall provide a statement that states either that

- 1) The industrial design has not been disclosed to the public by publication or by use or by being displayed to the public prior to the earliest of the application date, the application's priority date if applicable, or the application's date of temporary protection, if applicable; or
- 2) A disclosure has been made, and the nature and dates of such disclosure, and any reason that applicant believes such disclosure does not render the industrial design to be no longer new.

Such statement may be provided to the Department by the applicant at the time of filing or at any time before the expiration of the period for responding to a request by the Department to provide such a statement.

3. The Department may require the applicant to submit additional information and in particular may require the applicant to provide a specimen or sample of the goods embodying the design or to which the design is applied, or photographs of such goods. The Department shall return to the applicant, at the applicant's expense, a bulky or oversized specimen or sample that cannot be readily stored in the Department's files or, at applicant's option, shall dispose of such items.

4. Where an applicant proposes to file several industrial design applications at the same time, the application for each industrial design must be filed separately. However, the applicant may rely on the provisions of Article 73, paragraph 4, of this Decision with regard to all attachments to the application other than the disclosure, drawings, and claims.

Article 17. Drawing and Description.

1. Each application to register an industrial design shall include one or more drawings or photographs that clearly disclose the design, showing, as applicable, how the design relates to the object to which it is applied or in which it is embodied. The application may include one or more views as needed to disclose the design and illustrate its appearance. If the design is embodied in a three-dimensional object, a perspective view will ordinarily be needed, together with such additional views as may be needed to show different aspects of the design, for example, a different appearance on one or more sides of the object.

2. The application shall include such description as may be needed to aid in understanding of the design. The description should be limited to a brief statement explaining the drawing or photograph.

3. Drawings and photographs must comply with Article 74 of this Decision. Where drawings or photographs are supplied that do not meet the requirements of Article 74 of this Decision, but such drawings or photographs are legible, the Department may accept the drawings or photographs for purposes of examination and notify the applicant that it will be necessary to supply drawings or photographs that comply with the provisions of Article 74 of this Decision prior to acceptance of the application for registration.

4. Drawings and photographs shall not include extraneous material, that is, material that is not either part of the design or needed to illustrate the design or its application to or embodiment in a useful object. Where drawings or photographs appear to include such extraneous material, the Department shall inquire of the applicant, before completing substantive examination, to determine whether such material is extraneous or is considered by the applicant to comprise part of the design. If such material is determined to be extraneous, the Department shall notify the applicant that it will be necessary to supply drawings or photographs that comply with the provisions of this paragraph prior to acceptance of the application for registration. Examples of situations where this paragraph may be applicable include the following:

- 1) In an application to register a new design relating to the shape of a container, the photograph shows the container bearing a label. The Department would

inquire of the applicant as to whether it is intended that the label be part of the design.

- 2) In an application to register the ornamental appearance of a box, the design applied to the box includes a copyright notice. This notice would ordinarily be considered to be extraneous material and the Department would issue a requirement to supply a corrected drawing or photograph removing the copyright notice.

Such items as the name of goods, patent, trademark or copyright notice, weights or volumes, or other descriptive items are ordinarily considered to be extraneous material and will normally be the subject of a requirement to supply corrected drawings or photographs.

Where it is clear that a drawing or photograph includes extraneous material, and the appearance of the design can nevertheless be understood, the Department may proceed with examination and require the applicant to provide corrected drawings before the application is accepted for registration.

Where drawings are presented, surface shading should be used to show the character or contour of surfaces. Photographs must not disclose environmental structure but must be limited to the design claimed for the article.

Article 18. Description of Objects to Which Industrial Design Applies

The industrial design application shall briefly state the nature of the object or objects to which the industrial design applies, for example, shoes, book, automobile, together with an indication of the international class in which such goods are found. An industrial design cannot be registered without reference to a specific object or objects to which the design applies or in which it is embodied. A statement that the design applies to everything will not be considered to comply with this requirement.

Article 19. Other Disclosure Requirements.

1. The Department may require the applicant to submit additional information as needed to carry out its examination or to respond to other matters that may be raised in connection with the application.

2. The Department may require the applicant to provide a specimen or sample of the industrial design or other such items if needed for purposes of examination. The Department shall return to the applicant, at the applicant's expense and subject to applicant's arrangements, a bulky or oversized specimen or sample that cannot be readily stored in the Department's files or, at applicant's option and expense, shall dispose of such item. The Department may dispose of perishable materials without notice unless the applicant makes prior arrangement to have such items returned to applicant or otherwise disposed of at applicant's expense.

3. Since the industrial design will be subject to publication, a drawings that include material subject to copyright or other rights of another person who is not the applicant or inventor shall include a statement authorizing the reproduction of such material. Such authorization shall be substantially as follows:

A portion of the disclosure of this industrial design document contains material which is subject to copyright (or integrated circuit layout-design) protection. The (copyright or integrated circuit layout-design) owner has no objection to the reproduction by anyone of the patent or the patent disclosure as it appears in the file or records of the Lao Intellectual Property Department but otherwise reserves all (copyright or integrated circuit layout-design) rights whatsoever.

SECTION IV Priority and Temporary Protection

Article 20. Priority

1. An application may claim priority on the basis of on an earlier-filed application pursuant to Article 29 of the Intellectual Property Law. A claim for priority is made by submitting a written statement that requests such priority and identifies the industrial design application that can serve as a basis for a priority claim under the Paris Convention. The Department will determine whether the requirements are met to satisfy the priority claim. If the requirements are met, the priority date shall be the effective filing date in the Lao PDR for purposes of evaluating whether the requirements for protection have been met and for purposes of determining any third party claims or rights to the industrial design. The effect of a declaration of priority shall be as provided in the Paris Convention and in the Intellectual Property Law.
2. A priority claim can only be based on a regular national filing of an application in the intellectual property office of a country, customs union, or of any territory that is a member of the Paris Convention or of a bilateral, regional, or other international agreement of which the Lao PDR is a member and which provides for a right of priority. The Department shall from time to time publish a notice identifying the countries and offices where such filing may serve as the basis for a priority claim.
3. Any person claiming the priority of a previous application shall indicate the filing date of such application, the country in which it was made, and the number of that application, and the type of intellectual property to which the application pertains, for example, industrial design, and shall provide a copy of the relevant priority document, certified as correct by the authority which received such application. The copy of the previous application may be filed with the Lao application or at any time within three months of the filing of the Lao application.
4. Where a claim for priority is made, but the required information or documents are not submitted with the claim, the Department shall inform the applicant to submit such information or documents, stating the time within which such documents must be received. Such documents shall be submitted in any event within three months from the filing date of the application in the Lao PDR.
5. Where the copy of an application, duly certified by the issuing office, is submitted within the time provided in paragraph 2 of this article, together with a translation of such document into the Lao language, it shall be considered to be timely filed and, if the Department finds the priority claim to be otherwise in order, a priority date awarded.

6. Where such documents are not in the Lao language, a priority date shall be provisionally awarded and the applicant shall be notified to provide a translation into the Lao language. Such documents shall be considered to be timely filed, and the requirement for a copy of the application to have been met, if the copy is submitted within the time allowed in paragraph 3 of this article and the translation is provided within 60 days of notification by the Department to provide a translation.

7. If the applicant fails to complete the requirements for priority within the time or times set, the priority declaration shall be considered to have been abandoned by the applicant and the application will be examined as though the priority declaration was not made.

8. Where applicable, an application shall be entitled to claim multiple priorities based on applications filed in one or more countries where such applications relate to the subject matter of the Lao application, and further provided that for industrial designs, any designs disclosed therein are closely related. In such case, the applicant may be required to identify the subject matter pertaining to each priority claim.

9. Priority will not be refused on the ground that certain elements of an industrial design for which priority is claimed do not appear among the claims in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

10. The periods of priority shall be six months for industrial designs, beginning from the filing date of the application on which priority is based but excluding the filing date of such application and ending on the date that is six months after the priority date. Where the last day of the priority period is an official holiday or a day when the department is not open the period shall be extended until the first following working day.

11. It is permissible to claim priority for a patent application on the basis of an application for a petty patent, and the reverse, and to claim priority for an industrial design on the basis of an application for a patent, petty patent, or utility model, and the reverse, provided however that the such applications will nevertheless need to comply with requirements for the applicable form of intellectual property that is the subject of the Lao application.

Article 21. Temporary Protection at Certain International Exhibitions

1. An applicant who wishes to claim the benefit of temporary protection under Article 30 of the Intellectual Property Law shall submit a written request for such protection. Such request may be filed with the application or at any time within six months from the date on which the goods were first exhibited or rendered at the exhibition and shall include information necessary for the Department to evaluate whether the applicant is entitled to the protection requested. Such information will usually include the following:

- 1) Name of the international exhibition, its purpose, and criteria for eligibility to participate in the exhibition;
- 2) Place where such international exhibition was held, and an indication of the places from which participants were drawn;
- 3) The name and address of the sponsors or organizers of the exhibition;
- 4) Explanation of the official nature of the exhibition, or of its official sponsorship, as applicable, and the name and address of the official body that

sponsored or granted official recognition to such exhibition;

- 5) Dates during which the international exhibition was held, or if applicant's goods were not exhibited during the entire period of the international exhibition, dates during which applicant's goods were exhibited;
- 6) Applicant's goods that were exhibited at the international exhibition as relevant to the request for temporary protection, and a brief statement indicating how the goods were displayed.
- 7) A copy of documents that provide evidence of the exhibition, such as a flyer, program guide, official letter of invitation, or the like, where such documents tend to establish one or more of the facts mentioned above.

2. Temporary protection will be available only where the application is filed within six months from the date on which the goods were first exhibited or rendered at such exhibition.

3. If the Department finds that the conditions of Article 30 of the Intellectual Property Law have been satisfied, the application shall be deemed to have been filed on the date on which the goods were first exhibited at such exhibition.

4. An applicant who is entitled both to claim priority and temporary protection under this article will be accorded the earlier of the two dates. Temporary protection under this article shall not be applied so as to extend any other claim of priority.

SECTION V

Formalities Examination

Article 22. Examination for Formalities.

1. An application for which a fee has been paid and that has been assigned an application number shall be examined to determine whether it contains all of the elements described in Articles 15 through 19 of this Decision, and whether such elements appear to satisfy formal requirements, for example, whether the application is presented on the proper form, whether a drawing is legible, and whether elements of the application are presented in the order required. The formalities examination shall not address the merits of each element or whether such element satisfies substantive requirements to allow registration.

2. An application that is found to satisfy formal requirements shall be accepted for substantive examination.

3. If the application is not complete or does not satisfy the formal requirements as described herein, the Department will notify the applicant of any requirements not satisfied and the applicable period of time in which the applicant must meet the requirements.

Article 23. Single Design or Related Designs.

1. As provided in Article 32 of the Intellectual Property Law, each application for industrial design registration shall apply to a single industrial design or a series of related designs for a single international class. In applying this provision, the Department will consider the overall appearance of the designs included in the application. Where the application relates to more than one design, such designs shall be considered to be related if they present the same general appearance based on the inclusion of the same major design elements. In making this

determination, minor differences will not be taken into account if they do not substantially alter the overall appearance of the design.

2. Where the Department determines that the application includes more than one design, and such designs are not considered by the Department to comply with the requirement of the previous paragraph of this article, the Department will notify the applicant and invite the applicant to divide the application as provided in Article 42 of the Intellectual Property Law and Article 24 of this Decision.

Article 24. Division.

1. As provided in Article 42 of the Intellectual Property Law, an applicant may, up to the time when the application is in order for grant, amend the application without fee, provided that the amendment shall not go beyond the disclosure in the initial application.

2. An applicant may up to the time when the application is in order for grant, divide the application into two or more divisional applications provided that each divisional application shall not go beyond the disclosure in the initial application. Each divisional application shall be entitled to the filing date and where applicable, the priority date or temporary protection date, as applicable, of the initial application.

3. An application may be divided into one or more divisional applications by filing one or more subsequent applications that make reference to the application being divided. The second or subsequent application shall be identical to the application on which it is based and shall be accompanied by a statement that the newly filed application is a division of such earlier application, which shall be identified by its filing number, title, name of designer, and filing date. Both the newly-filed application (or applications) and the earlier application shall be amended to restrict their claims to contain only a single industrial design, as appropriate, or a group of such related items as to meet requirements for the relevant form of intellectual property such as unity of invention. Such amendment may be filed with the divisional application or within 60 days thereafter.

4. Where an application is divided, the applicant shall pay an additional filing fee for each divisional application that is in addition to the application that has been divided

Article 25. Re-Filing; New Material; Amendment and Re-Filing to Claim Correct Form of Protection.

1. As provided in Article 42 of the Intellectual Property Law, at any time an application is pending before the Department but before the Department has granted an industrial design or registration thereon, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may re-file the application together with any amendments by paying the application fee.

2. An application that is re-filed as provided in paragraph 1 of this article shall be entitled to the benefit of the filing date of the earlier-filed application (including any priority or temporary protection claim) provided that it contains or is amended to contain a specific reference to the earlier-filed application and further provided that any amendments do not introduce new information that goes beyond the scope of the original application as filed.

3. Where an application is re-filed as provided in paragraph 1 of this article but is accompanied by amendments that introduce material that goes beyond the scope of the original application as filed, such re-filed application shall be entitled to the benefit of the filing date of the earlier-filed application (including any priority or temporary protection claim) with regard to any disclosures in such earlier-filed application, provided that it contains or is amended to contain a specific reference to the earlier-filed application, and with regard to such information that goes beyond the scope of the original application as filed, the re-filed application shall be entitled to the filing date on which it was actually re-filed in the Lao PDR.

4. The procedure of this article may be used to convert an industrial design application to an application for a patent or petty patent, or to convert a patent or petty patent application to an application to register an industrial design. The converted application is eligible to receive the filing date and, if applicable, the priority or other effective filing date of the earlier-filed application, provided that such conversion shall not serve to extend the priority period for an industrial design.

SECTION VI

Substantive Examination

Article 26. Search and Substantive Examination.

1. When an application has been found to satisfy the formal requirements set forth in this Decision, the Department shall conduct a substantive examination in accordance with this Section to determine whether the application meets the requirements of Article 15 of the Intellectual Property Law and whether the grant of an industrial design is barred by Article 22 of the Intellectual Property Law.

2. Substantive examination shall include a search to identify any earlier industrial designs or other disclosures that may create a bar to the grant of an industrial design pursuant to Article 15 of the Intellectual Property Law. Substantive examination for novelty shall be based on a comprehensive search of information that is already known. In determining whether an industrial design is new, the Department shall compare the industrial design that is the subject of the application with available information from industrial design registrations in the Lao PDR and abroad and with other information that is publicly available. The Department shall take into consideration the statement provided by the applicant pursuant to paragraph 2 of Article 16 of this Decision.

3. The Department shall prepare a written report identifying any grounds for refusal of the application, any objections to registration, and any conditions or restrictions thereon. The Department shall promptly provide this report to the applicant, who shall have an opportunity to respond to such objections and, if desired, to amend the application consistent with the provisions of Article 29 of this Decision.

4. The time for responding to any communication from the Department is 60 days from the date such communication is sent unless otherwise provided. If an applicant fails to respond satisfactorily to any requirement or ground for refusal within the stated time for action, the Department will take final action on the application 90 days from the date of the requirement

or other communication unless the applicant files an appeal within this period.

Article 27. Subject Matter to be Protected as Industrial Design

1. An industrial design may be applied to, or embodied in, one or more useful objects. As provided in Article 15 of the Intellectual Property Law, to be registrable, an industrial design must be ornamental, that is, it must give a special appearance to the object to which the design is applied or in which it is embodied, and such appearance must not be a functional feature of the design or dictated by technical features of the object. Since the essence of an industrial design is the appearance it gives to a useful object, to be protected under the Intellectual Property Law, an industrial design must relate to the appearance of the object to which it is applied or in which it is embodied.

2. A design may relate to an entire object, or it may relate to a portion of the object.

It is not necessary that the design relate to an element that can be seen from every view of the object.

Article 28. Technical Characteristics.

1. Industrial design protection is distinct from other forms of protection, and in particular, from the protection that may be available for inventions or utility innovations. Aspects of an object that relate to its technical or functional characteristics, such as how it is made or used, are typically the subject matter of a patent or petty patent and in any event are not the subject matter of an industrial design registration.

2. Where the appearance of a design is essentially dictated by technical features of the object to which the design is applied or in which it is embodied, Article 22 of the Intellectual Property Law provides that the industrial design shall be ineligible for registration. Technical features of an object are features that relate, for example, to the materials from which an object is made, the method by which the object is manufactured, or its method of operation. Such features may create a different appearance, but pursuant to Article 22, that appearance is not entitled to protection as an industrial design.

Article 29. Amendment During Examination.

As provided in Article 42 of the Intellectual Property Law, at any time an application is pending with the Department but before the Department has granted an industrial design thereon, and before the abandonment, final rejection, or other termination of proceedings on the application, the applicant may amend the application without fee, provided that any such amendment shall not change the essential appearance of an industrial design.

Article 30. Refusal Based on False or Misleading Statements.

At any time during the pendency of an application, the Department may refuse an application that the Department has good reason to believe contains false or misleading information or with regard to which the Department has good reason to believe the applicant or applicant's

representative is making false or misleading statements to the Department. In such case, the Department shall first notify the applicant of the Department's intended action and the grounds therefor and permit the applicant to withdraw or correct such information or statements, subject, however, to any limitations on new information set forth elsewhere in this Decision.

Article 31. Persons Entitled to File; Effect of Filing.

1. Subject to the Intellectual Property Law and Article 6 of this Decision, an application may be filed by the designer or other person who owns the industrial design in accordance with the Intellectual Property Law. If filed by a person who is not the designer, the application must name the natural person or persons who made the design.
2. By filing an application, or by having such application filed on his or her behalf, the applicant consents to be bound by this Decision and certifies that applicant is legally entitled to file the application, and that all information provided in the application is true to the best of applicant's knowledge and belief, after reasonable inquiry to determine the facts.

Article 32. Designership; How Determined.

1. A designer is a person who makes an industrial design, regardless of whether such industrial design is entitled to the protection of an industrial design.
2. There is no fixed process by which an industrial design is made. An industrial design may be, for example, the result of careful research and experimentation, a sudden flash of inspiration, or the realization of a discovery, provided in all cases that to obtain an industrial design thereon, such industrial design must satisfy all requirements for protection.
3. A person makes an industrial design when such person has a completed conception of all of the elements of the invention sufficient to prepare an enabling disclosure or, if the invention is the result of a discovery, when such person recognizes the elements of the discovery in sufficient detail to prepare an enabling disclosure. Note that the idea for an invention may result in the making of an invention, but the mere idea itself, without such sufficient detail as may be needed for an enabling disclosure, is not an industrial design and is not subject to the protection of an industrial design.
4. Care should be taken in naming the actual designer of an industrial design. Designers have a moral right to be named as designer in any industrial design application based on such person's inventive contribution. Moreover, the identify of designers has legal consequences with regard to the right to file an application and with regard to ownership of the subject matter of the industrial design, the right to file an application, and ownership of any resulting industrial design. In particular, the failure name the correct designer, or correctly name all joint designers, or naming as a designer a person who did not actually contribute to the making of the industrial design, may result in a loss of rights to the industrial design. Intentionally providing incorrect information on the identity of one or more designers will be considered a deceptive act that may result in striking the application or cancellation of the industrial design, or a transfer of ownership as provided in Article 57 of this Decision.
5. In determining whether a person is a designer for purposes of the Intellectual Property Law

and this Decision, the primary issue is whether such person made a contribution of knowledge or creativity that resulted in the making of the industrial design. A person who merely carried out the instructions of others without making a contribution of knowledge or creativity is not considered to be a designer, nor is a person who supervised or provided funding for the activity that resulted in such industrial design but who did not contribute knowledge or creativity to the making of the invention, even where such person may be entitled to ownership by virtue of Article 46 of the Intellectual Property Law.

6. Where an industrial design is jointly made, every person who contributes to the making of the industrial design by contributing to the inventive concept is a designer for purposes of this article. Such persons are considered to share equally in the designship of the industrial design without regard to the proportion in which such contribution was made. The pivotal issue in determining whether a person's contribution is sufficient to name such person as a designer in an application is whether the industrial design, as claimed, would have been made absent such person's contribution. During the course of prosecution of an application, it may be necessary to amend an application to correct the list of designers named therein.

Article 33. Evaluating Novelty.

1. For purposes of Article 15 of the Intellectual Property Law, the public disclosure of an industrial design shall be determined with regard to each design included in an application.

2. In determining whether an industrial design is new, the Department shall compare the industrial design that is the subject of the application with available information from industrial design registrations in the Lao PDR and abroad and with other information that is publicly available. The Department shall take into consideration the statement provided by the applicant pursuant to paragraph 7 of this article.

3. A disclosure shall render the design no longer new for purposes of Article 15 of the Intellectual Property Law where the design is identically disclosed.

4. A disclosure is considered to have been made pursuant to Article 15 of the Intellectual Property Law if such disclosure occurs in any part of the world before the filing date of the application or if applicable, before the priority date or temporary protection date of the application, or such application's effective filing date based on the re-filing of an application.

In particular, the following acts are considered to constitute a disclosure pursuant to Article 15 of the Intellectual Property Law:

- 1) Grant of a registration on the relevant design anywhere in the world;
- 2) Publication or laying open for inspection of such design anywhere in the world;
- 3) Publication of the design in a journal or other published writing anywhere in the world,
- 4) Publication of such design in advertising or marketing material;
- 5) Commercial exploitation of the design or of objects to which the design is applied or in which it is embodied, anywhere in the world;
- 6) Subject to paragraph 4 of this article, any other disclosure of such design anywhere in the world.

5. For purposes of Article 15 of the Intellectual Property Law, communication of a picture, drawing, or other image of the design shall not be considered to be a disclosure to the public where such communication is made under an obligation of confidentiality or in circumstances that would not be expected to lead to a release of the design or of a item bearing or embodying such design to the public unless such communication leads to such release to the public. Communication in circumstances described in this article include, for example, communication made:

- 1) Under a written confidentiality agreement;
- 2) Within the organization or enterprise that is the right holder;
- 3) Within family circles or to selected acquaintances;
- 4) To an attorney or agent;
- 5) To a third party for purposes of a transfer of ownership of a design that has not yet been placed in commercial use.

6. For purposes of Article 15 of the Intellectual Property Law, the filing of an application shall not be deemed to render a design to be no longer new until the application is published or laid open for inspection or results in a patent, petty patent, or registration, as the case may be.

7. Determination as to whether a communication is subject to paragraph 5 of this article shall be the responsibility of the applicant. In case of doubt, an applicant may provide a statement that describes any disclosure or communication of the design prior to the earlier of the filing date or effective filing date of the application, including a disclosure that the applicant believes is subject to paragraph 5 of this article, together with such information and documents as will allow the Department to evaluate whether a communication is subject to paragraph 5 of this article.

Article 34. Evaluating Ornamentality and Features Dictated by Technical Functions.

1. As provided in Article 15 of the Intellectual Property Law, to be registrable, an industrial design must be ornamental, meaning that it gives a special appearance to the object to which the design is applied or in which it is embodied. The requirement of ornamentality shall be evaluated on the basis of the overall appearance of the industrial design, taking into account its shape, lines, colors, or other elements that contribute to its overall appearance.

2. Even where an object has a distinctive appearance, it may fail to be ornamental if such appearance is dictated by technical features of the invention. Where a design is dictated by such features, it must be refused registration pursuant to paragraph 1 of Article 22 of the Intellectual Property Law.

Article 35. Right to Require Additional Information. Where serious doubts exist as to the correctness of any information or documents included in or annexed to an application, the Department may notify the applicant or agent to furnish, within a period not exceeding three months or 90 days from the date of notification, evidence proving the correctness of such data or documentation.

Article 36. Refusal of Designs Contrary to Social Order and Fine Traditions of the Nation.

In accordance with paragraph 2 of Article 22 of the Intellectual Property Law, an industrial

design may be refused registration where it is contrary to social order and the fine traditions of the nation. A design will be considered to be contrary to social order and the fine traditions of the nation where it consists of, comprises, or includes material that is scandalous or obscene or otherwise offensive, where it includes disparaging material, or where publication of the design would constitute a violation of national Law.

Article 37. Abandonment of Application.

Pursuant to Article 43 of the Intellectual Property Law, the Department shall determine that an application is abandoned as of the times given below:

- 1) Where the application is incomplete,
 - a) If the application deposited with the Department is incomplete so that it does not meet minimum requirements for obtaining a filing date, after the expiration of 90 days;
 - b) If the application has been assigned a filing date and the applicant has been notified that the application is incomplete and given a time in which to make corrections or supply missing items, at the expiration of the period for such action.
- 2) Where the industrial design does not meet the requirements for protection, at the conclusion of the substantive examination and the expiration of any period for response by the applicant where the applicant has not filed a response that will place the application in condition for allowance.
- 3) Where it appears that the applicant is not entitled to apply for registration, after notice to the applicant and the expiration of any period for response that will show that the applicant is in fact entitled to apply.
- 4) Where the applicant fails to pay the required fees for the application or to maintain the protection in force,
 - a) If the application deposited with the Department has not been assigned a filing date because the filing fee was not paid, after the expiration of 90 days;
 - b) If the fee relates to an extension of time or other fee that is due in connection with the prosecution of the application before the Department, and remains unpaid sixty days after the Department notifies the applicant to pay such fee, at the expiration of such period.
 - c) If the application is in condition for allowance and the filing fee is not paid, sixty days after notification to pay such fee, at the end of such period.
 - d) Where a fee is required to maintain an application in effect and remains unpaid after the period set forth in Article 35 of this Decision, six months after the anniversary of the filing date at the end of the period for which the application is in effect.

Article 38. Publication.

1. Except as provided in paragraph 2 of this article, where the relevant requirements for protection are satisfied, the Department will record the relevant information in the official industrial property gazette and publish such information and issue a certificate to the applicant.

2. An applicant may, subject to paying the applicable fees, request earlier publication of the application.
3. Where an application has been assigned, an applicant may, subject to paying the applicable fees and providing the relevant information, request that the publication include the assignee's name and address.
4. Where a publication contains a mistake, an applicant may request republication with corrected information, without additional fee, provided that such request must be filed within two months from the date of the earlier publication.

SECTION VII Rights and Obligations

Article 39. General Rights.

The owner of an industrial design shall have such rights as are provided under Article 47 of the Intellectual Property Law as set forth in this Decision.

Article 40. Enjoyment of Benefits from Exploitation.

For purposes of paragraph 2 of Article 47 of the Intellectual Property Law, the enjoyment of benefits from exploitation shall be as specifically defined for industrial designs as described in Article 56 of the Intellectual Property Law. Such rights shall be subject to any limitations set forth in the Intellectual Property Law or this Decision.

Article 41. Scope of Rights of Exploitation.

1. In applying Article 56 of the Intellectual Property Law and Article 40 of this Decision, the scope of rights of the owner of an industrial design shall be defined with reference to the drawing or picture of the item that is the subject of the design, including the object to which the design is applied or in which it is embodied.
2. In applying this article, minor differences in the design shall not serve to distinguish a similar object from the scope of protection afforded by the registration, provided that the overall appearance of the item would appear to be the same to an ordinary person. In this regard, the scope of coverage is determined by the impression to the eye of an ordinary person of the object to which the design is applied or in which it is embodied.
3. The application of the design to a different object is not within the scope of protection under this article.

SECTION VIII Term, Invalidity, and Post-Grant Procedures

Article 42. Term of Protection; Fees to Ensure Full Term.

1. Pursuant to Article 50 of the Intellectual Property Law, the term of protection for an

industrial design shall be fifteen years beginning from the filing date of the application for registration in the Lao PDR. To maintain the industrial design registration in effect, the owner of industrial design shall pay in advance to the Department a fee to maintain the registration or application in effect. The period for paying the fee shall begin five years from the filing date of the application for industrial design registration and shall be payable every five years thereafter.

2. In measuring the term, the day of filing shall be counted and the final anniversary of such date shall be excluded.

3. Enjoyment of the full term of protection shall require the payment of the relevant fees to maintain the application or industrial design in effect as provided in Article 50 of the Intellectual Property Law. Such fees shall be due even if the application is still pending before the Department. Such fees shall be paid in advance of the expiration of the period stated and the fees required to maintain the application or industrial design in force for the remaining term may be paid in advance at any time after filing. The period for paying such fees expires on the anniversary of the filing date at the end of the latest period for which fees have been paid.

4. Deferment of publication shall not affect the obligation to pay fees as provided in this article.

5. An industrial design, or an application therefor, shall lapse if fees are not paid during the period set forth in paragraph 3 of this article. It is applicant's responsibility to pay such fees when due, and the Department will not issue notices of fees due until the expiration of the period set in paragraph 3, at which point the applicant or owner shall be notified that such application or industrial design has lapsed for non-payment of fees.

6. Where an industrial design, or an application therefor, has lapsed as provided in paragraph 3 of this article, an applicant may nevertheless pay such fees during the next succeeding six months, subject however, to the payment of a surcharge for late payment, as provided in the Presidential Decree on Fees. Where fees are paid, together with the surcharge, during the period set by this paragraph, the registration, or application therefor, shall be restored and shall deemed to have remained in effect as if such fees had been timely paid in accordance with paragraph 2 of this article.

Article 43. Provisional Protection.

1. Pursuant to Articles 55 and 56 of the Intellectual Property Law, the owners of industrial designs are entitled to provisional protection during the period between filing and grant of the industrial design. During such period, the owner shall not be entitled to prohibit acts by other persons that, if undertaken without the right holder's permission, would constitute infringement, but once such right is granted, and subject to the requirements of paragraph 2 of this article, the right holder shall be entitled to equitable remuneration from any person who, during the said period, has carried out acts which require the right holder's authorization as provided in the Intellectual Property Law and this Decision.

2. The right to equitable remuneration provided under paragraph 1 herein shall only take effect in relation to persons whom the right holder has notified of the filing of the application or who have actual knowledge of such filing, at the time or times that are the subject of the

claim for equitable remuneration. No suit shall be brought against any person for the exercise of rights as provided under paragraph 1 unless such person has first been notified of the filing of the application and relevant details as to its scope of protection.

Article 44. Invalidity and Cancellation Requirements.

1. Article 45 of the Intellectual Property Law fixes the times at which rights terminate, to the extent that such events apply, but the grounds for termination of rights to industrial property shall be solely as defined in the relevant Regulations. For purposes of paragraph 4 of Article 45 of the Intellectual Property Law, commercial exploitation shall include importation and sale.

2. Pursuant to Article 44 of the Intellectual Property Law, at any time within five years from the date of publication of a registered industrial design, any interested person who satisfies the requirements of Article 6 of this Decision may object to the registration of the industrial design or request its cancellation. For purposes of Article 44 of the Intellectual Property Law, a request to modify the registration shall be referred to as an objection, and a request to cancel the registration in its entirety shall be referred to as a cancellation.

3. An objection or cancellation request may be brought by filing with the Department an application to modify or cancel the registration and paying the fee therefor. The application shall indicate whether the application requests modification or cancellation and the relief sought. The application must be signed by the party or parties bringing the action or by their representative and shall include the following elements:

- 1) Name and address of the party or parties filing the objection or cancellation request and, if available, the telephone number and email address of each. If the application is filed by more than one party jointly and the parties are not represented, the application should designate one person and address for correspondence.
- 2) If the parties are represented, the name and address of the representative and, if available, the telephone number and email address of the representative.
- 3) A power of attorney if applicable.
- 4) The industrial design that is the subject of the action.
- 5) A brief statement of the grounds on which the action is filed, specifically pointing out the basis for the objection or cancellation of the registration and the relief sought, as set forth in paragraphs 3 and 4 of this article.
- 6) A statement of the party's interest in the objection or cancellation.
- 7) A summary of the evidence supporting the ground identified.
- 8) Reasonable evidence supporting the grounds alleged in item 5 of this paragraph.

4. An objection must include an allegation that registration of the industrial design interferes with, or reasonably can be expected to interfere with, the exercise of the rights of the objecting party.

5. An application for cancellation of an industrial design registration can be brought on one of the following grounds:

- 1) That the industrial design failed to meet one or more requirements for protection under Articles 15, 22, or 26 of the Intellectual Property Law as further implemented by this Decision.
- 2) That the registration is invalid because the application was granted on the basis of false or misleading information supplied by the applicant or the applicant's representative.

6. Formal requirements shall not form the basis for a complaint to invalidate and cancel an industrial design. In particular, it shall not be a ground for invalidation of an industrial design that the application did not comply with the requirement that designs be closely related. Issues relating to the naming of designers or the capacity of the applicant shall be as provided in Article 32 of this Decision.

7. Procedures for an application to the Department to object or cancel a registration shall be as provided in Articles 45 and 46 of this Decision.

8. Where the basis for such claim relates to the novelty of an industrial design, the application for objection or cancellation shall be evaluated on the basis of information that existed at the time the application was filed or such earlier effective filing date to which the application may have been entitled. Evaluation of novelty shall be in accordance with Article 33 of this Decision. Evaluation of ornamentality and technical function shall be in accordance with Article 34 of this Decision.

9. Pursuant to Article 45 of the Intellectual Property Law, any interested person who believes that an industrial design was granted in error may file a complaint to the Court in accordance with the Civil Procedure Code demanding the cancellation of the industrial design, or of certain embodiments thereof, on grounds that the subject matter thereof failed to comply with one or more requirements for protection pursuant to Article 15 of the Intellectual Property Law or that it was ineligible for protection pursuant to Article 22 of the Intellectual Property Law. A cancellation action brought pursuant to Article 45 of the Intellectual Property Law may be brought at any time during the term of the registration of the industrial design or thereafter in any action to enforce rights in such industrial design. Upon the final decision of the competent court finding invalidity in accordance with this article, an industrial design, or any claims thereof, found to be invalid shall be considered void and shall have no legal effect from the date of issue of the industrial design. Upon communication of such decision to the Department, the Department shall cancel the registration and publish such cancellation in the official industrial property gazette.

10. Where a cancellation proceeding is before the Court, the Department may, with consent of the Court, appoint one or more persons to serve as experts in cases relating to complaints brought under this article in relation to Articles 45 and 136 of the Intellectual Property Law.

11. Any party who puts into issue the validity of a patent or petty patent, whether in a special cancellation action or as part of a defense to a charge of infringement, shall notify the Department of such claim and, if the patent or petty patent is cancelled in whole or in part, shall deliver to the Department a copy of the relevant Court decision.

12. No action may be brought to terminate rights in an industrial design other than as provided in this article.

Article 45. Procedures for Objection or Cancellation.

1. Except as otherwise provided, applications to the Department to object to or cancel a registration shall be subject to the procedures provided in Articles 8, 9, 10, and 37 of this Decision, *mutatis mutandis*.

2. Promptly upon receiving notice that the application has been accepted for filing, the applicant shall serve a copy of the application and any accompanying information on the registrant. Such notice may be served at the correspondence address on file with the Department. If the applicant is unable to serve a copy on the applicant at such address, service shall be attempted at one or more of the following addresses:

- 1) The correspondence address of applicant's representative in the Lao PDR.
- 2) If the registrant is a governmental entity, at an official address associated with such governmental entity.
- 3) At any other address at which the registrant may reasonably be expected to be reached, if such address is known to the applicant.

3. The applicant shall thereafter file with the Department a statement that the application was served on the registrant, as applicable, together with evidence supporting such statement. If service has been attempted but is not successful, that applicant shall file a declaration that it has attempted to serve a copy of the application and its accompanying material on the registrant, detailing the means it has employed to effect service, but that after diligent efforts, the applicant has been unable to accomplish such service. Such declaration shall be filed together with supporting evidence.

4. Where the applicant files a declaration that it has unsuccessfully attempted service as provided in paragraph 3 of this article, the Department shall examine the evidence to determine whether it appears that a reasonable effort has been made to serve the registrant. If it finds such efforts to be insufficient, it shall notify the applicant to correct the deficiency within 60 days. If it finds such efforts to have been sufficient, the Department shall notify the registrant at the last correspondence address provided by the registrant that an application has been filed and the nature thereof and require the registrant to provide a response within 60 days. If the Department receives no response within the stated period, it shall publish notice to the registrant and shall proceed as though the applicant had received actual notice.

5. Upon receiving verification that the registrant has been served with a copy of the application and accompanying material, the Department shall examine the application for formalities. For a cancellation action, the application shall be examined to determine that it meets the requirements of Article 45 of this Decision.

6. An application that satisfies relevant formal requirements as described in paragraph 5 of this article shall be subject to a substantive examination by the Department to determine whether the application establishes a *prima facie* basis on which to grant the application. For purposes of this Decision, a *prima facie* basis is established where the application and evidence contained in the application, if not rebutted, would be sufficient to establish all elements required to satisfy paragraphs 3, 4, or 5 of Article 44 of this Decision, as appropriate.

7. If the Department finds that an application establishes a *prima facie* basis for granting the application, it shall notify the applicant and the registrant that the application has established a *prima facie* basis for further review and has been accepted for further consideration in accordance with Article 44 of this Decision. An application that, after substantive examination, fails to establish a *prima facie* basis shall be refused, and both parties shall be so notified.

8. The Department will not issue advisory opinions regarding the likelihood that a particular application will be canceled or other action taken and will not provide legal advice to applicants regarding the grounds or types of evidence needed to support applications therefor.

Article 46. *Inter Partes* Procedures for Cancellation.

1. Where an application establishes a *prima facie* basis for granting the relief requested in the application, the Department shall refer the application to a Board established to hear *inter partes* matters.

2. Within 60 days of notification that the application has been found to establish a *prima facie* basis for granting the application, the registrant shall file a response to the application, specifically admitting or denying each element of the application or, if the registrant is without sufficient information on which to evaluate an element, so stating, and submitting such evidence as the registrant believes will rebut the elements of the application. The registrant may, in this filing, present any defenses to the allegations in the application or the requested relief or submit any new information or evidence it believes is relevant to the application.

3. The applicant shall have a single opportunity to rebut any statements or evidence presented by the registrant pursuant to paragraph 2 of this article. Thereafter, the registrant shall have a single opportunity to respond to the rebuttal, provided however, that no new issues of fact or law shall be raised by either party in the course of the rebuttal proceedings.

4. The registrant and applicant shall each file such statements with the Department. Each party shall serve or attempt to serve a copy of all documents on the other party and shall submit evidence of such service or attempted service to the Department.

5. Each submission shall be made within 60 days of service of the previous document, provided, however, that the Department may, upon request and for good cause shown, extend such time by an additional 30 days.

6. When the documents referred to above have been received by the Department, or the time for their submission has expired, the Board will examine the application, response, and rebuttal statements, together with evidence submitted by each party, and render a decision as to whether to grant the application and the relief sought. The Board shall make its determination by preponderance of the evidence and shall be based solely on the information contained in the file.

8. The parties may compromise and settle any such proceeding at any point during the pendency of the application, provided however that such compromise and settlement must be reduced to writing and provided to the Department for review and approval. A compromise and settlement will be approved unless it is found to be contrary to the Intellectual Property

Law as it relates to industrial designs, for example, by granting a license that would result in a monopolistic practice.

SECTION IX Administrative and Judicial Review

Article 47. Preventing and Correcting Mistakes.

The Department shall have the authority to provide for a review of any action taken by the Department and to take such administrative action as may be needed to prevent or correct a mistake. Such actions may be taken on the authority of the Director General or such person's designee or as a result of quality review that may be instituted by the Department.

Appeals and other actions provided in this Section are necessary and appropriate to the orderly administration of the Intellectual Property Law. Appeals, requests for reconsideration, and other actions provided in this Section shall be governed by the procedures set forth in this Decision. A request made under these procedures is part of the administrative procedure of the Department and is without prejudice to any rights that may arise under the Petitions Law.

Article 48. Administrative Review: How Initiated.

1. Any applicant or other person who is a party to a proceeding with the Department and who believes the Department has made an improper requirement or decision in such proceeding may, within 90 days of notification of such requirement or decision, take one of the following actions:

- 1) File a written request for reconsideration of the decision or requirement, without payment of a fee, or
- 2) File a written appeal to the Department and pay the relevant fee therefor.

2. Such request must identify the

- 1) Requirement or decision to be reviewed,
- 2) Legal and factual basis on which the request is based, and
- 3) Action requested by the applicant.

3. The request may also include any arguments or explanations that the applicant or other party believes supports the request for reconsideration or appeal.

Article 49. Request to Stay.

A request for administrative review initiated pursuant to Article 48 of this Decision may include a request to stay the implementation of the decision or requirement that is the subject of the request for reconsideration or of the appeal. Otherwise, such decision or requirement remains in effect until such time as it may be withdrawn by the Department. In *ex parte* matters, a stay shall be freely granted in the interests of justice, taking into account the interests of third parties. In *inter partes* matters, the Department shall additionally consider

the interests of other parties to the matter and grant a stay where the interests of justice shall best be served.

Article 50. Reconsideration.

1. Where an applicant, registrant, or other party to an *ex parte* proceeding makes a reasonable showing that there is a reasonable basis on which to review the requirement or decision that is the subject of a request for reconsideration, the Department shall grant the request and reconsider the issue leading to the requirement or decision in view of the information and arguments or explanations offered by the applicant, registrant, or other party to the proceeding. Granting a request for reconsideration does not bind the Department to withdraw a requirement or render a different decision but rather to ensure that it gives the matter a new hearing. Since the Department's only interest in the outcome of its decisions is to ensure that they are correct, a request for reconsideration should not be viewed as an affront to the Department nor to any of its employees. A request for reconsideration is intended to create an informal mechanism allowing the Department to make corrections quickly.

2. The same principles shall apply in *inter partes* proceedings, provided, however, that in *inter partes* proceedings, the party requesting review must serve a copy of such request and any accompanying materials on the other party or parties to the proceedings. Such other party or parties shall be entitled to be heard on the request and to submit its own documents supporting or opposing such review, following the procedures provided in Article 47, *mutatis mutandis*. The Department shall weigh the interests of the parties in deciding whether to grant a request for reconsideration. A request to stay may also be filed as provided in Article 49 of this Decision.

3. An action brought under this article is a request for the Department to exercise its supervisory authority.

4. An applicant who is dissatisfied with the holding on the appeal to the Department may appeal to the court within such time as provided under the Civil Procedure Law.

5. No fee shall be charged in connection with a request for reconsideration.

Article 51. Board of Appeals.

A Board of Appeals shall be constituted to resolve administrative appeals relating to the grant, refusal, or any requirement made by the Department in connection with an application or issued industrial design. The Board of Appeals shall be independent of any Division within the Department. The Board may have permanent or temporary existence, provided that no person shall take part in deciding an administrative appeal of such person's own decision.

Article 52. Appeal Procedures.

1. An administrative appeal is initiated by filing a written appeal and paying the fee for such appeal. The appeal shall consist of a cover page; argument; and legal authority supporting the argument if available.

2. The cover page shall identify the application or registration that is the subject of the appeal

by title and number; the name of the applicant or registrant, and the name of the party filing the appeal if other than the applicant or registrant; the date of the decision or requirement being appealed; and a brief statement identifying the decision or requirement that is the subject of the appeal.

3. The argument required in paragraph 1 of this article must specifically identify the issue that is being appealed, for example, the Department's requirement to restrict a design application to a single embodiment, the Department's requirement to provide additional information, or the refusal of the application. The appeal shall comply with the requirements of this Decision regarding correspondence with the Department.

4. The argument must also point out the legal basis for the appeal, referring specifically to relevant portions of the Intellectual Property Law or this Decision, and may include a statement by the applicant pointing out how the relevant legal basis supports the applicant's appeal. The argument may also refer to other authority that may be relevant to the issue and will be useful to the Board of Appeals in reaching its decision, including relevant portions of international agreements and decisions or rules of other jurisdictions.

5. Where the appeal relies in whole or in part on specific facts, the appeal shall identify such facts by reference to the application or previous correspondence with the Department.

6. Department personnel who participated in the decision being appealed may provide a similar statement of the legal and factual basis for the decision for consideration by the Board of Appeals. The person bringing the appeal shall have a single opportunity to submit a response to such statement, subject to the provisions of paragraphs 3 through 5 of this article.

7. The Board of Appeals shall consider the appeal based on the written record as described in this article and shall render a decision in writing, which shall set forth the Board's decision and the legal and factual reasons therefor. Such decision shall be provided to the person bringing the appeal.

8. At the conclusion of the appeal, an application will be returned to the Department for such further action as may be appropriate, consistent with the holding of the Board of Appeals, unless the person bringing the appeal files an appeal to the Court within the time for filing such appeal as provided under the Civil Procedure Law.

9. Where an appeal fails to provide the information required under paragraphs 2 through 4 of this article, the Board of Appeals may summarily dismiss the appeal.

Article 53. Further Appeals.

An applicant or other party who is dissatisfied with the Department's decision or requirement following a request for reconsideration may appeal to the Department as set forth above. Filing a request for reconsideration is not a requirement for filing an appeal with the Department. An applicant or other party who is dissatisfied with the holding on the appeal to the Department may appeal to the court within such time as provided under the Civil Procedure Law.

Article 54. Incorrectly Named Designers; Capacity of Applicant.

1. At any time during the pendency of an application or during the term of an industrial

design, any interested person may petition the Department to correct the identification of designers mentioned in the application. The Department shall notify the owner of record of such petition and, if no objection is made by the applicant or owner of record, the Department shall enter such correction. If an objection is made, the Department shall refuse to enter the requested information, and the interested party shall have recourse to the Courts pursuant to the Petitions Law.

2. Where it appears that an application has been filed by an applicant who is not entitled to file such application, for example, where the applicant did not design the subject matter of the application and does not have rights to the industrial design, the Department may require the applicant to secure such authorization from the true designers or from such other person as may be entitled to exercise rights of the designer as provided in the Intellectual Property Law. The Department shall fix a time within which such requirement must be met and shall suspend examination until such requirement is met within the time fixed.

3. Any person who believes he or she is entitled to be named as designer, or to file the application, may petition the Court pursuant to the Petitions Law for an order transferring ownership of the application or industrial design to such person, or to add such person to the application as appropriate.

Article 55. Files or Papers that Cannot Be Located.

In the event that the Department cannot, after a reasonable search, locate a file or other paper relating to an application or other proceeding, the Department shall attempt to reconstitute its records through other sources. In such case, the Department may request the applicant or owner to provide a copy of such person's record (if any) of the relevant paper or of correspondence in the relevant file, together with a statement that the copy is a complete and accurate copy of the applicant's or owner's record of all of the correspondence between the Department and the such person for the relevant paper or file, or that the applicant or owner is aware of but does not possess other records of such correspondence with the Department.

SECTION X Transfer of Rights and Resolution of Disputes

Article 56. Transfer of Rights; Recordation Required.

1. Pursuant to Article 47 of the Intellectual Property Law, the owner of an industrial design may transfer ownership to all or part of the rights an industrial design; to an application for an industrial design registration; or to any registration resulting from such application.

2. Where there is a transfer of ownership of a legal entity, the ownership of rights to industrial designs shall be as set forth in the document providing for such transfer. In the absence of such provisions, transfer of ownership a legal entity is presumed to include a transfer of any designs owned by the entity being transferred, and of any industrial designs or of applications therefor.

3. Rights to such property may also be transferred by inheritance or by gift.

4. Any transfer of ownership shall be recorded with the Department, using the form provided.
5. The Department may require the person presenting a transfer for recordation to submit additional information or documents where needed for clarification or where the Department may reasonably doubt the veracity of any indication contained in any communication.
6. A transfer of ownership shall not be enforceable against a person who is not party to the transfer until so recorded unless such person has actual notice of the transfer.
7. Where a single transfer relates to multiple files or applications, a single transfer document may be filed using the procedures of paragraph 4 of Article 72 of this Decision.
8. If the transfer is submitted for recordation by a person other than the owner of record, the Department shall send a written notification of the proposed transfer recordation, and of the owner's right to object, to the owner of record at the latest address of record. An objection to the recordation of a transfer may be filed without fee at any time within 60 days of notification.
9. If the transfer appears to meet requirements for recordation, the Department shall publish a notice referring to the transfer.

Article 57. Licenses.

1. A license agreement may be recorded using the procedures of Article 56 of this Decision, in which case it shall be subject to the same requirements. Where rights to intellectual property are jointly held by multiple persons, a license shall be mutually agreed by all rights owners.
2. The sale of an item that is the subject of an industrial design, or that incorporates subject matter that bears or embodies an industrial design, shall be assumed to grant a license to the purchaser and others acting on behalf of the purchaser to use the object bearing or embodying the industrial design for the object's intended use, and if the purchaser is a legal entity, in connection with such entity's ordinary business, where such sale is by the owner of the industrial design, or by a person acting with the authority and permission of such owner, unless the parties to the transaction agree otherwise in writing.
3. The provisions of paragraph 2 of this article shall apply *mutatis mutandis* to the rental, lease, gift, or other transaction with regard to the item that bears or embodies the industrial design, provided however that where such transaction is limited in time or scope, such implied license shall likewise be limited to the same time and scope, and provided that where such transfer is a gift or, if a sale, is for less than the market value of the transaction, the purchaser shall have the burden of demonstrating that the owner agreed to such transaction.
4. Where there is a transfer of ownership of a legal entity that is a licensee of one or more industrial designs, it shall be presumed that the licenses are transferred with the ownership of the legal entity unless specifically provided otherwise either in the license agreement or in the document providing for the transfer of ownership of the legal entity. Transfer of ownership of a legal entity shall not affect the validity of any license arrangement for which such entity is the licensor, unless otherwise specifically provided in the license agreement.

Article 58. Recordation Procedures.

1. A party wishing to record the transfer or license of an industrial design registration or application shall submit an application to record such transfer, together with the recordation fee and a copy of the transfer document, certified to be true and correct. Procedures regarding the application to record a transfer or license shall be as provided in Article 8 of this Decision, *mutatis mutandis*. The recordation may be filed by the party making the transfer, the party receiving the transfer, or by a third party with knowledge of the transfer.
2. The Department may require the person presenting a transfer for recordation to submit additional information or documents, or to supply authenticated documents, where needed for clarification or where the Department may reasonably doubt the veracity of any indication contained in any communication.
3. Where a single transfer relates to multiple files or applications, a single transfer document may be filed using the procedures of paragraph 4 of Article 72 of this Decision.
4. If the transfer is submitted for recordation by a person other than the owner of record, the Department shall send a written notification of the proposed transfer recordation, and of the owner's right to object, to the owner of record at the latest address of record. An objection to the recordation of a transfer may be filed without fee at any time within 60 days of notification.
5. If the transfer appears to meet requirements for recordation, the Department shall publish a notice referring to the transfer.

Article 59. Resolution of Disputes.

For purposes of the resolution of disputes or enforcement of rights pursuant to Section VIII of the Intellectual Property Law, the industrial design owner shall have the right to enforce rights provided in Article 56 of the Intellectual Property Law. Any action with regard to the resolution of disputes or enforcement of rights shall be interpreted with reference to the drawing or drawings of the industrial design as set forth in Article 17 of this Decision.

Section XI. Representation

Article 60. Persons Authorized to Appear before the Department.

1. Subject to the provisions of Article 6 of this Decision and paragraphs 2, 3, and 4 of this article, the following persons are authorized to appear before the Department:
 - 1) An applicant, with regard to the applicant's own application;
 - 2) Where more than one person jointly makes application, any one of such persons, subject to appointment by the other joint applicants;
 - 3) An attorney who is authorized to practice law in the Lao PDR;
 - 4) A Practitioner or Patent Practitioner as defined in this Section with regard to the subject matter for which such person is authorized to act; or

- 5) Where the applicant is an organization, the owner or an officer of such organization, or an attorney or agent employed by such organization;
- 6) An attorney or agent who is an employee of the applicant or assignee of the entire interest in the subject matter of the application.

2. Subject to the provisions of Article 6 of this Decision, any person may represent himself or herself or may appoint a representative to act with regard the to the filing and prosecuting of any application, or with regard to any action relating to an industrial design, or in any other proceeding before this Department.

3. Notwithstanding the provisions of paragraph 1 of this article, an assignee of an application, an applicant, owner or other interested person may act before the Department for purposes of

- (i) The filing of an application for the purposes of receiving a filing date and receiving a filing receipt;
- (ii) The mere payment of any fee and receiving a receipt for such payment.

4. Any fee required to maintain an application in effect may be paid by any person.

Article 61. Appointment of Representative.

1. A representative is appointed by a power of attorney. The power of attorney must be signed by the applicant or other principal. Where an application is filed by joint designers, the power of attorney must normally be signed by all of the joint designers unless one or more of such persons are dead or otherwise unavailable, or refuse to join in the application, in which case, such fact shall be stated in the correspondence to the Department.

2. Subject to Article 60 of this Decision and other requirements of this Section, a power of attorney may appoint more than one representative, provided that all such representatives have the same representation address.

Article 62. Power of Attorney.

1. A Power of Attorney authorizes a representative appointed in accordance with this Decision to act on behalf of the principal. Except where the signature of the applicant or other party to a proceeding is specifically required, an act, with respect to any procedure before the Department, by or in relation to a representative who complies with the requirements set forth herein, shall have the effect of an act by or in relation to the applicant, owner or other interested person who appointed that representative.

2. A Power of Attorney shall specify the nature and scope of the representation. A Power of Attorney may authorize the representative to represent the principal with regard to one or more matters before the Department, which shall be identified in the Power of Attorney, or it may relate to all matters before the Department including all existing and future industrial design applications or registrations of that person, subject to any exception indicated by the appointing person. Likewise, a Power of Attorney may be given for an indefinite term or limited as to its duration. In all events, the Power of Attorney may be revoked by the principal at any time, without prejudice to the right of the representative to compensation for services rendered and expenses incurred on behalf of the principal during such representation.

3. The Department will give effect to the terms of the Power of Attorney except where it would be contrary to law or public policy to do so, for example, where a Power of Attorney purports to limit the ability of the principal to revoke the Power of Attorney or to provide terms of representation that are contrary to this Decision.

4. Where a Power of Attorney does not state the scope or duration of the representation, the Department will treat the Power of Attorney as applying solely to the single application or other proceeding in connection with which the Power of Attorney is originally submitted, and its duration will be treated as terminating when all matters related to such application or other proceeding are concluded and the time for further action thereon has expired.

5. In the absence of evidence to the contrary, a representative will be presumed to act in accordance with instructions of the principal or in accordance with such principal's wishes.

Article 63. Requirements for Giving Effect to Power of Attorney.

1. To be given effect by the Department, a Power of Attorney shall be in writing and signed by the principal. Such signature shall be notarized or legalized, at the option of the principal.

Where more than one person is principal, for example, in the case of joint inventors, the power of attorney shall be signed by all of them unless good reason is shown why one or more of such persons has not signed.

Where the principal is a legal entity, the power of attorney shall be signed by the owner of such entity or by an officer or other person with the legal authority to bind the organization.

2. Such document shall be identified as a Power of Attorney and shall

- 1) Give the representative power to act on behalf of the principal and
- 2) Name one or more representatives in accordance with Article 47 of this Decision.

3. Where the Power of Attorney is in a foreign language, it shall conform to the language requirements of the Intellectual Property Law and this Decision.

4. Where there is reasonable doubt as to the authenticity of a Power of Attorney or as to a representative's authority to act, the Department may require such authentication or confirmation as it deems appropriate in the circumstances, including, for example, correspondence from the principal.

Article 64. Power of Attorney for Multiple Matters.

Where a Power of Attorney relates to multiple applications, files, or proceedings, it shall be sufficient to supply one Power of Attorney that satisfies the requirements of this Section and to submit a copy of such Power of Attorney with other applications, files, or proceedings, provided that the copy identifies the application number for the file where the original power of attorney is filed.

Article 65. Power of Attorney: When Presented; Effect of Failure to File.

1. A power of attorney, duly signed, shall be presented with the first application or other

action to which it pertains.

2. Where an application or other paper is presented by a representative but the power of attorney, or where applicable, a copy thereof, is not submitted with such application or other paper, the Department shall provisionally accept such application or other paper and notify the Representative to provide the power of attorney within 60 days from such notification.

3. Failure to present the power of attorney at such initial action shall not invalidate such filing where representation is not mandatory. Where representation is mandatory, failure to present the power of attorney shall not invalidate such filing provided the applicant or other party provides a power of attorney within the time provided in the Intellectual Property Law and this Decision.

4. If the Power of Attorney is not provided within 60 days of the notification, the Department shall change the correspondence address to that of the applicant or other principal and notify such person directly that it has 60 days in which to appoint a representative and provide the Power of Attorney, and the consequences of failing to comply with such requirements, which may include suspending action on the application or other matter or, if representation is mandatory, abandonment of the application or other filing.

5. The Department may refuse to accept further correspondence from the Representative in connection with such application or other proceeding until the Power of Attorney is submitted.

6. Correspondence from an agent or attorney who presents a new power of attorney with a different representation address is presumed to revoke the previous power of attorney unless the Department is promptly informed otherwise. Where the new power of attorney has the same representation address, the Department will assume that the previous power of attorney remains in effect unless the Department is promptly informed otherwise.

Article 66. Termination of Representation.

1. Representation terminates when a power of attorney is revoked by the principal, when the matter that is the subject of the representation is concluded as provided in the power of attorney or as otherwise provided in this Decision, or when the representative withdraws from the representation and such withdrawal is accepted by the Department as provided herein, whichever is earlier.

2. Where the Department receives a power of attorney appointing a different agent, it shall notify the representative of record unless it appears on the face of the new power of attorney that such notification has already been effected.

3. A representative who withdraws must notify the Department and the principal of such withdrawal. The Department will notify the principal of such withdrawal unless it appears on the face of the communication that such person has already been notified. Such withdrawal shall be accepted by the Department unless it occurs in an application or other matter on which action is due and insufficient time remains for the principal to take such action or, if representation is mandatory, for the principal to obtain other representation and take such action.

4. The termination of representation or appointment of a new representative shall have no effect on an application or other action that was filed by a previous representative, subject however to the requirement of mandatory representation where applicable.

Article 67. Persons Authorized to Act as Representatives Before the Department.

1. Any person who is of good moral character and possesses the knowledge of intellectual property and the education to carry out the duties of representative, and who has an address in the Lao PDR, may be authorized to be a Practitioner and represent others before the Department, subject to other requirements of this article.

2. Any agent or attorney who, as of the effective date of this Decision, has practiced before the Department for at least one year shall be presumed to satisfy the qualifications of paragraph 1 of this article.

3. Any person who satisfies the qualifications of paragraph 1 of this article may be authorized to become a Patent Practitioner if such person has a technical education and demonstrates a knowledge of patent law and practice sufficient to enable such person to prepare and prosecute an original patent application. The Department may provide by Notice the qualifications that will be accepted and may administer such examinations as may be required to determine whether such persons meet the relevant qualifications.

Article 68. Registration Required; Practitioner List Published.

1. Any person wishing to act as a representative before the Department shall register as a Practitioner or Patent Practitioner. By registering, such person agrees to carry out his or her duties faithfully and in accordance with the provisions of this Decision and with other Decisions or notices issued by the Ministry on requirements for carrying out the business of being a representative on intellectual property.

2. To register, such person shall indicate his or her name and address; representation address if different from such person's address; telephone number or numbers, facsimile and email address, or other contact information as applicable; languages; whether such person is qualified as a Patent Practitioner and if so, such person's general area of technical expertise; website if applicable; and areas of practice. Where such person's representation address or other contact information changes, such person shall promptly inform the Department of the current information.

3. The Department shall maintain a list of Practitioners and Patent Practitioners who are authorized to represent applicants or other persons in transacting business before the Department. The Practitioner List shall include such information as provided in paragraph 2 of this article. The Department shall publish such list annually and may provide a copy thereof to any person upon request but shall not recommend or aid in the selection of an attorney or agent.

4. The provisions of this article shall take effect not later than three months from the effective date of this Decision.

Article 69 Implementation through Instructions and Notices.

Consistent with Article 147 of the Intellectual Property Law, the Department shall issue instructions and notices and take such other actions as may be necessary to carry out the provisions of this Section.

Article 70. Continued Requirements for Practitioners and Patent Practitioners.

1. The Department may from time to time issue other requirements for Practitioners and Patent Practitioners, including attendance at continuing education provided by the Department.

2. Practitioners and Patent Practitioners who are registered as provided in this Section are under a continuing obligation to act in accordance with the Intellectual Property Law, this Decision, and any other applicable law or regulations. Any person found to act contrary to this paragraph may be advised to correct such acts and if not promptly corrected, or if repeated, may be subject to sanctions by the Department. Such sanctions may include suspension or removal from the list of registered Practitioners or Patent Practitioners.

SECTION XII
Administrative Provisions

Article 71. Secrecy and Access to Files.

1. Files and documents relating to applications that are pending before the Department and that have not yet been published shall be maintained in secrecy. No person other than the applicant or a named inventor or designer shall have access to such files or the information contained therein without written permission from the applicant. A power of attorney is considered to grant such permission.

2. Files and documents relating to applications that have been published, and to industrial designs shall be available for public inspection and copying during normal business hours, subject to payment of applicable fees. Where requests for inspection or copying involve a large number of documents or multiple files, the Department may make reasonable provisions, such as requiring an appointment or limiting the number of documents or files available on a single day, as needed to ensure its orderly conduct of business.

3. No files or documents therein shall be altered, destroyed, or removed from the premises of the Department. The Department may bar any person found to be violating this paragraph, or attempting to do so, from future access to documents and files of the Department.

Article 72. Communication with the Department.

1. All business with the Department relating to an industrial design, an application there for, or any proceeding before the Department, should be transacted in writing. The action of the Department will be based exclusively on the written record in the Department, and no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

2. All persons are required to conduct their business with the Department with decorum and courtesy. Papers presented in violation of this requirement may be refused entry.

3. Since each file must be complete in itself, a separate copy of every paper to be filed in connection with a file for an industrial design, or with an application there for, or with any other proceeding, must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The Department may dispose of duplicate copies of correspondence in the file of an application, industrial design, or other proceeding.

4. Where the same document relates to more than one file, it shall be sufficient to provide a single original that complies with all applicable requirements for such document together with a copy of the original for each file and an indication on such copy of the file with which the original is associated.

5. The Department will correspond with only one person or entity. This person or entity may be the applicant or intellectual property owner or other party to a proceeding before the Department, or may be such person's authorized representative. Initial correspondence in any matter is required to include an address for correspondence, which address may be changed at any time. Where more than one address is presented, the Department will choose one of the addresses for correspondence. If the party is represented, the correspondence address will be presumed to be the correspondence address of the representative.

6. Where there is a change of correspondence address or the appointment of a new or substitute representative, the applicant or other party should promptly notify the Department of such change and should include a separate document of notification for each application or industrial design to which the information relates.

Article 73. Identification of Documents.

1. Each item of correspondence relating to an industrial design, or to an application there for, or to any proceeding within the Department, should bear on the top page in a conspicuous location an indication of the nature of the correspondence, for example, patent application, request for extension of time, amendment, response to Department communication, appeal, or payment of fees.

2. If the correspondence relates to an application that has already been filed or to an issued industrial design, the correspondence should also bear the filing number of the application or number of the industrial design, as applicable; the name of the applicant or designer, as applicable; and the title of the industrial design, as appropriate. In addition, unless it is impractical, each page and each item enclosed with the correspondence should bear at least the filing number of the application or the registration number of the industrial design to which it refers. For items such as drawings or pictures, such information may be recorded on the reverse side of the item in pencil or on a label.

3. Correspondence relating to an application should ordinarily not be filed prior to receipt of the application number from the Department.

Article 74. Form of Correspondence.

1. Correspondence with the Department relating to industrial designs or applications there for, or to any proceeding within the Department, should be made on flat, non-shiny paper that

is A4 in size and recorded in dark ink or its equivalent. Correspondence must be legible and subject to photocopying as needed. Bulky items should not be submitted except with the express permission of the Department.

2. Documents and drawings or photographs submitted to the Department should be clear and of suitable quality for publication. Where such items are not of suitable quality for publication, the Department may accept such items for purposes of examination but may require the submission of publication-quality documents, drawings, or photographs prior to final approval of the application.

3. Where needed to illustrate the subject matter of an application, the applicant should provide high-quality drawings in black and white. Photographs or color images will be accepted for examination purposes but the applicant must submit corrected drawings prior to publication. Where photographs or color images are required for an understanding of the subject matter, the application should so state, and the use of such photographs or color images is subject to the payment of a surcharge on the publication fee. Where photographs are used, the applicant must provide copies that are of sufficient quality so that all details in the photographs are reproducible in the publication and in the printed industrial design registration.

4. If items submitted are not legible or are not of sufficient clarity to enable the Department to conduct an examination, the Department shall so notify the applicant and provide an opportunity for the applicant to submit corrected documents. Where such new documents relate to the subject matter of the application, their acceptance will be subject to requirements related to changes in the content of an application.

Article 75. Documents to be Signed; Effect of Signature.

1. Every application, amendment, request for extension of time, submission of documents, or other paper submitted to the Department in connection with an industrial design, or application therefor, or with any proceeding within the Department, must be signed by the applicant or industrial design holder or other person submitting the document, or by such person's representative. Unless specifically provided, the signature does not need to be verified or certified. The Department may refuse to enter an unsigned paper unless the omission is promptly corrected after being called to the attention of the person submitting the document or on whose behalf the document is being submitted, or the representative of such persons.

2. By signing a document, by submitting a signed document, or by later advocating it, the person signing such paper, and the person presenting such paper, certify that :

- 1) All statements made therein of such person's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Department, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties for making a false statement, and that violations of the provisions of this article may

- jeopardize the probative value of the paper; and
- 2) To the best of such person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,
 - (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Department;
 - (ii) Legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension or modification of existing law or the establishment of new law;
 - (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

3. Violations of any of paragraphs (2)(i) through (iv) of this article are, after notice and reasonable opportunity to respond, subject to such sanctions or actions as deemed appropriate by the Director, which may include, but are not limited to, any combination of

- 1) Striking the offending paper;
- 2) Referring a practitioner's conduct to the Director disciplinary action;
- 3) Precluding a practitioner or other person from submitting a paper, or presenting or contesting an issue;
- 4) Affecting the weight given to the offending paper; or
- 5) Terminating the proceedings in the Department.

4. Any practitioner violating the provisions of this article may be subject to disciplinary action.

5. Where the Department has reasonable doubt as to the authenticity of a signature, for example where there are variations in the appearance of a signature or where the signature and typed or printed name do not clearly identify the person signing, the Department may require the submission of a document ratifying or confirming the document in question or evidence of the authenticity of the signature.

Article 76. Times for Taking Action; Expiration on Saturday, Sunday or National Holiday.

1. Wherever the Law, this Decision, or communication by the Department specifies a time for taking action or paying a fee, such period shall be calculated as follows:

If the period is stated in days, calendar days are intended, and the period shall be calculated by excluding the first day and including the final day. If the period is stated in months or years, the period shall expire on the same date of the relevant month or year.

2. If the last day of the period is an official holiday, or a day when the Department is not open for business, the period shall be extended until the first following working day.

3. The Director General may provide for an extension of time based on a delay or loss of mail service caused by war, revolution, civil disorder, strike, natural calamity or other like reasons.

4. Except as provided in this Article, the period for filing an application for an industrial design registration shall not be extended.

Section XIII Registration and Service Fees

Article 77. Fees.

Fees are payable, in advance, at the time of filing and before any publication other than the initial publication of the registration or the re-publication mentioned in Article 38 of this Decision. Payment of the registration fee will include the fees due for initial publication of the registration.

Article 78.

The fees for filing application

SECTION XIV Final Provisions

Article 89. Implementation.

Article 80. Effective Date.

This Decision shall enter into force on the date of its signature.

Minister of Science Technology