

**Governmental Decree No. 63/CP of 24 October 1996 on
Detailed Regulations Concerning Industrial Property
(amended and supplemented by
Governmental Decree No. 06/2001/ND-CP of February 01, 2001)**

GOVERNMENT

Pursuant to the Law on the Organization of Government dated 30 September, 1992;

Pursuant to the Civil Code dated 28 October, 1995;

Based on the Law on complaints and denouncements No. 09/1998/QH10 dated 02 December 1998;

Based on the Resolution of the 8th Session of the 9th National Assembly dated 28 October, 1995;

In order to enhance the adequate and effective protection of industrial property rights with respect to inventions, utility solutions, industrial designs, trademarks and appellations of origin;

The Minister of Science, Technology and Environment,

hereby

DECREES:

Chapter 1

GENERAL PROVISIONS

Section 1: The Purpose and Scope of the Regulation

This Decree stipulates detailed regulations on industrial property for the purpose of implementing the provisions on industrial property rights in Chapter II and the provisions on the transfer of industrial property rights in Chapter III, Part 6 of the Civil Code, which was passed by the National Assembly of the Socialist Republic of Vietnam on 28 October, 1995.

The provisions of this Decree shall apply only to inventions, utility solutions, industrial designs, trademarks and appellations of origin and shall not apply to other industrial property objects.

Section 2: Terms and Definitions

The terms and definitions contained in this Decree shall have the respective meanings ascribed to them hereunder:

- (1) "The Civil Code" refers to the Civil Code of the Socialist Republic of Vietnam as passed by the National Assembly on 28 October, 1995;
- (2) "The Paris Convention" refers to the Paris Convention for the Protection of Industrial Property, which was signed in Paris in 1883, and amended in Stockholm in 1967;
- (3) "The PCT" refers to the Patent Cooperation Treaty, which was signed in Washington in 1970, and amended in 1984;

- (4) "The Madrid Agreement" refers to the Madrid Agreement concerning the International Registration of Marks, which was signed in Madrid in 1891, and amended in 1979;
- (5) "Applicant" refers to the applicant filing an application for a Protection Title for inventions, utility solutions, industrial designs, trademarks or appellations of origin;
- (6) "Protection Title" refers to the Protection Title for inventions, utility solutions, industrial designs, trademarks or appellations of origin;
- (7) "Trademarks" shall be read as including service marks;
- (8) "Collective mark" refers to a mark used simultaneously by a collective of natural or legal persons or other entities, each member of which is entitled to independent use of the mark in accordance with the regulations stipulated by such collectives;
- (8^A) "Associated marks" are similar trademarks that belong to the same owner and are used for similar or inter-related goods and services, as well as identical trademarks registered by the same owner and used for similar or inter-related goods and services;
- (8^B) "A well-known mark" is any mark which has become widely known by being continuously used for reputable goods and services;
- (9) "Creator of an invention, utility solution or industrial design" refers to the person or persons who were directly involved in the creation of an invention, utility solution or industrial design by using his, her or their creative labour.

Those who provide technical, material or financial assistance and support to the creator without themselves making a creative contribution to the creation of an invention, utility solution or industrial design shall not be considered as a creator of such invention, utility solution or industrial design.

Section 3: Calculations of Time Limits

Time limits provided for in this Decree shall be calculated in accordance with Articles 158, 159, 160, 161 and 162 of the Civil Code.

Chapter 2

OBJECTS OF INDUSTRIAL PROPERTY PROTECTED BY THE STATE

Section 4: Inventions and Utility Solutions

- (1) In accordance with Articles 782 and 783 of the Civil Code, a technical solution shall be deemed a world-wide novelty when measured against the state of the prevailing art on the following conditions:
 - (b) The technical solution described in the application for a Protection Title for an invention or utility solution is not identical with solutions described in the applications for Protection Titles for inventions or utility solutions that were filed with the competent authority and that bear earlier priority dates;
 - (c) Before the priority date of the application for a Protection Title for an invention or utility solution, the technical solution described in the application has not been publicly disclosed domestically and/or abroad by way of the use or description in any of the sources of information listed below with the result that, based on that disclosure, a person with average skill in the art would be able to carry out such a technical solution. The sources of information are as follows:
 - Sources related to inventions or utility solutions abroad, as of the publication date;

- Other sources with any information carrier (printed matter, film, magnetic tape, magnetic disc, optic disc etc.) as of the date the information carrier has first been circulated;
- Mass media sources (radio, broadcasting, television), as of the publication date;
- Scientific reports, lectures etc., if recorded by any means, as of the date of report or lecture;
- Exhibitions, as of the date the exhibit has first been presented;

Information shall not be deemed publicity disclosed if only a limited number of related persons are aware of such information.

A technical solution shall not be deemed lacking novelty if it is published by another person without the authorization of the applicant and if the publication dates back no further than 6 months prior to the filing date.

- (2) In accordance with Article 782 of the Civil Code, a technical solution shall be deemed to involve inventiveness, if it is the result of creative activity, and, based on the available domestic and foreign technology at the priority date of the application of a Protection Title for an invention or utility solution, it is not obvious to a person with average skill in the art.
- (3) In accordance with Article 782 of the Civil Code, a technical solution shall be deemed industrially applicable if, based on the nature of the technical solution described in the application for a Protection Title for an invention or utility solution, it can be executed under existing or future technical conditions, and if the results described in the application for a Protection Title can be achieved.
- (4) The following objects shall not be protected by the State as inventions or utility solutions:
 - Scientific concepts, principles and discoveries;
 - Methods and systems for economic organization and management;
 - Methods and systems for education, teaching and training;
 - Methods for the training of animals;
 - Systems regarding the linguistics, the information, the classification or the compilation of documentation;
 - Designs and planning schemes for construction works and projects for regional development and planning;
 - Solutions concerning only the shape of articles and being of an aesthetic nature only;
 - Conventional signs, timetables, rules and regulations and symbols;
 - Computer software, layout designs of integrated circuits, mathematical models, graphs and the like;
 - Plant or animal varieties;
 - Methods for the prevention, diagnosis or treatment of diseases for human being and animals;
 - Processes bearing the biological requirements (except for micro-organic processes) for producing plants and animals.

Section 5: Industrial Designs

- (1) In accordance with Article 784 of the Civil Code, an industrial design shall be considered a world-wide novelty, if it meets the following conditions:

- (a) It is substantially different from the industrial designs described in the applications for Protection Titles for industrial designs that were filed with the competent authority and that bear earlier priority dates;
- (b) It is substantially different from industrial designs of the same kind which have been published in any of the following sources:
 - Sources related to the protection of industrial designs abroad, as of the publication date;
 - Other sources listed in Section 4(1)(b) of this Decree as applied *mutatis mutandis* to industrial designs;
- (c) The industrial design described in the application has not been publicly disclosed either domestically or abroad before the priority date of the application for a Protection Title, with the result that based on that disclosure, a person with average skill in the art would be able to produce such an industrial design. The disclosure can take the form of a usage or description. The sources of information from which the idea can be disclosed are mentioned in (b) above.

For the purposes of this section, two industrial designs shall not be considered substantially different from each other if they can only be distinguished by shaping features not easily recognized or memorized, and such features cannot be used for a general distinction between the said industrial designs.

- (2) In accordance with Article 784 of the Civil Code, an industrial design shall be considered capable of being used as a pattern for articles of industry or handicraft if the articles to which the industrial design is visually applied can be mass-produced by industrial or handicraft methods.
- (3) The following objects shall not be protected by the State as industrial designs:
 - External designs of articles which can be easily created by a person with average skill in the art;
 - External designs attributable to technical characteristics of an article or bearing only technical features;
 - External designs of civil or industrial construction works;
 - Designs of articles invisible in the intended process of utilization;
 - Designs of articles that have mere aesthetic value.

Section 6: Trademarks

- (1) In accordance with Article 785 of the Civil Code, a sign used as a trademark shall be considered distinctive if it adequately meets the following conditions:
 - (a) It has been created from one or several original elements that are easy to recognize, or from several elements combined to form an original set that is easy to recognize, with the exception of signs provided for in (2) of this Section;
 - (b) It is not identical to, or confusingly similar to, another person's trademark that is protected in Vietnam or that is protected in accordance with international agreements to which Vietnam is a member;
 - (c) It is not identical to, or confusingly similar to, trademarks described in the applications for Protection Titles that were filed with the competent authority and that bear earlier priority

dates, or to trademarks referred to in applications filed in accordance with international agreements to which Vietnam is a member;

- (d) It is not identical to, or confusingly similar to, another person's trademark whose validity has expired or has been terminated within the last 5 years, except where the validity was terminated only on the basis of non-use of the trademark in accordance with Section 28(2)(c) of this Decree;
 - (e) It is not identical to, or confusingly similar to, another person's trademark that is also recognized as a well-known trademark in accordance with Article 6bis of the Paris Convention or another person's widely used and recognized trademark;
 - (f) It is not identical to, or confusingly similar to, trade names or geographical indications (including appellations of origin) that are being protected;
 - (g) It is not identical to an industrial design being protected or applied for that bears an earlier priority date;
 - (h) It is not identical with an image or a character subject to another person's copyright except by permission of the copyright owner.
- (2) The following signs shall not be protected by the State as trademarks:
- (a) Signs without distinctive characteristics, such as simple shapes and geometric shapes, figures, or letters, or wordings that cannot be pronounced as words, or foreign letters of uncommon languages, except for such signs that have been widely used and recognized;
 - (b) Signs, symbols, pictures or common names in any language of goods that have been widely and often used, or are common knowledge;
 - (c) Signs indicating the time, place, method of manufacture, type, quantity, quality, property, composition, purpose, or value of the descriptive character in relation to the goods, services or the origin thereof;
 - (d) Signs liable to mislead, confuse or deceive consumers as to the origin, functional parameters, purpose, quality or value of the goods or services;
 - (e) Signs identical with or similar to quality marks, control marks, warranty marks etc. of Vietnam, foreign countries or international organizations;
 - (f) Signs, names (including photos, names, pseudonyms, pennames etc.), pictures or symbols identical to, or confusingly similar to, the image of national flags, national emblems, national leaders or heroes, distinguished persons, geographical names, or organizations of Vietnam or foreign countries, unless permitted by the competent authorities or persons.

Section 7: Appellations of Origin

- (1) An appellation of origin to be protected shall be a geographical name of a country or locality where the respective goods are produced. Such goods will have peculiar characteristics or qualities attributed to the geographical, natural or human characteristics of the country or locality.

If the country referred to above is not Vietnam or the locality referred to above is not in Vietnam, the respective appellation of origin shall only be protected if it is being protected in the relevant country or locality.

- (2) The following objects shall not be protected by the State as appellations of origin:

- (a) Indications of origin which are not geographical names (including signs which may symbolize a certain country or locality without being the geographical name of the country or locality);
- (b) Appellations of origin which have become the common name of goods and have lost the function of indicating an origin.

Chapter 3

THE ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS

Section 8: The Basis for Establishing Industrial Property Rights and the Rights of Creators of Inventions, Utility Solutions or Industrial Designs

- (1) Industrial property rights that relate to inventions, utility solutions, industrial designs, trademarks and appellations of origin (in accordance with Article 780 of the Civil Code) as well as the industrial property rights of creators of inventions, utility solutions and industrial designs (in accordance with Article 800 of the Civil Code) shall be established only on the basis of a Protection Title issued by the competent authority in accordance with the procedures provided for in this Chapter.
- (2) In accordance with Article 780 of the Civil Code, industrial property rights relating to trademarks may also be established on the basis of the competent State authorities' acceptance of the protection of a trademark internationally registered under the Madrid Agreement.
- (3) Rights to a well-known mark arise on the basis of the use of the mark, provided that the mark is recognized by a competent State authority as a well-known mark.

Section 9: Protection Titles, the Registrations of Appellations of Origin, the Acceptance of Protection for International Registration Trademarks and the Recognition of Well-Known Trademarks

- (1) Protection Titles issued by the competent State authority shall be the only State certificates that certify the industrial property rights of Protection Titles' owners, the industrial property rights of creators of inventions, utility solutions and industrial designs, and that certify the scope of protection of industrial property rights.

The Protection Title shall be in effect throughout the whole territory of the Socialist Republic of Vietnam.

The National Office of Industrial Property under the Ministry of Science, Technology and Environment shall be the competent State authority referred to above.

- (2) Kinds of Protection Titles and Terms of Validity:
 - (a) Protection Titles for inventions are Patents for Inventions with a term of validity beginning on the date of the granting of the Protection Titles and expiring at the end of 20 years from the official filing date;
 - (b) Protection Titles for utility solutions are Patents for Utility Solutions with a term of validity beginning on the date of the granting of the Protection Title and expiring at the end of 10 years from the official filing date;
 - (c) Protection Titles for industrial designs are Patents for Industrial Designs with a term of validity beginning on the date of the granting of the Protection Title, and expiring at the end of 5 years from the official filing date (this term is renewable for two consecutive terms of 5 years);

- (d) Protection Titles for trademarks are Trademark Registration Certificates with a term of validity beginning on the date of the granting of the Protection Title, and expiring at the end of 10 years from the official filing date (this term is renewable indefinitely for consecutive terms of 10 years);
 - (e) Protection Titles for appellations of origin shall be Certificates of the Right of Use an appellation of origin with indefinite term of validity beginning on the date of the granting of the Protection Title.
- (3) Decisions on the acceptance of the protection of appellations of origin, international registration trademarks and well-known marks

Decisions on the registration of an appellation of origin, on the acceptance of the protection of an international registration trademark, and on the recognition of a well-known trademark issued by a competent State authority shall be the legal basis for certifying that the respective appellation of origin, and trademarks are protected by the State and shall determine the scope of protection of these subject matters.

The National Office of Industrial Property under the Ministry of Science, Technology and Environment shall be the competent State authority referred to above.

Section 10: The Terms of Protection, The Provisional Rights of the Owners of Inventions, Utility Solutions and Industrial Designs

- (1) The industrial property rights and rights of the creators of inventions, utility solutions or industrial designs established on the basis of a Protection Title shall be protected by the State as from the date of the granting of the Protection Title until the expiry date of such Protection Title or until the date the Protection Title ceases to be valid.

Industrial property rights over trademarks established on the basis of an international registration shall be protected by the State as from the date the international registration is published in the Official Gazette on International Registration of Marks of the World Intellectual Property Organization (WIPO) until the expiry date of the international registration under the Madrid Agreement.

Industrial property rights on a well-known mark are protected throughout the time period when the mark is recognized as a well-known one as stated in the Decision on the recognition of a well-known mark.

Appellations of origin are protected for an indefinite term from the date of issuing the Decision on the registration of the appellations of origin by the competent State authority, unless there are factors displacing the characteristics prescribed in paragraph (2)(e) Section 28 of this Decree.

- (2) From the date an application for a Protection Title for an invention, utility solution or industrial design is published in the Official Gazette of Industrial Property to the date the Protection Title is granted, the applicant may inform the persons who are starting to use the invention, utility solution or industrial design described in the application that an application thereto has been filed. If those persons continue such use despite having been informed, the owner of a Protection Title shall, after it has been granted, have the right to request that such persons pay an amount of money equivalent to the amount payable for the right to use the relevant industrial property object (licensing) for the respective period of time.

Section 11: Applications for Protection Titles

- (1) An application for a Protection Title shall be a set of documents expressing the applicant's request for a Protection Title for an invention, utility solution, industrial design, trademark or

appellation of origin with the respective contents and scope of protection or the request for the registration of an appellation of origin for the recognition of a well-known trademark.

- (2) Applications for Protection Titles shall form a unity. In particular, each application shall be a request for a Protection Title for only one object or a number of objects of the same kind and unified as to the purpose of use.

The unity of objects shall be understood as follows:

Inventions and utility solutions shall be considered a unity if they are closely linked to form a single general inventive concept.

Industrial designs shall be considered a unity if they relate to different articles of one set that are used together or if they form different embodiments of one industrial design.

One application for a Trademark Registration Certificate may relate to a number of products or services under the same trademark.

- (3) Applications for Protection Titles shall satisfy the requirements as to the form and substance according to the regulations of the Minister of Science, Technology and Environment.

Section 12: Language

Applications for Protection Titles and documents of communication between the applicants and the National Office of Industrial Property shall be made in Vietnamese. Documents in other languages shall be used for comparison, reference or ascertainment only.

Section 13: Conversion of an Application for a Protection Title for an Invention into an Application for a Protection Title for Utility Solutions and Vice Versa

- (1) Prior to the completion of the substantive examination, at a request of the applicant, an application for a Protection Title for an invention can be converted into an application for a Protection Title for a utility solution and vice versa. All the data concerning the filing date, and the priority date of the application before the conversion shall apply to the new application.
- (2) Within 3 months of the date of the notice of the refusal to grant a Patent for Invention, the applicant may request his or her invention application to be converted into a utility solution application. All data regarding the filing and priority dates of the application shall be maintained. In cases where the invention application is converted, the filing and examination fees already paid shall not be refunded and the applicant shall pay the due conversion fee.

Section 14: The Right to Apply for a Protection Title

The right to apply for a Protection Title as provided for in Article 789 of the Civil Code is as follows:

- (a) For an invention, utility solution or industrial design in cases not provided for in (b) and (c) of this subsection, the right to apply for a Protection Title belongs to the creator or the creator's successor;
- (b) For an invention, utility solution or industrial design created in the course of employment under duties assigned by the employer or created mainly by using funds or material facilities of the employer, the right to apply for a Protection Title shall belong to the employer assigning the task, or providing funds or material facilities to the creator;
- (c) For an invention, utility solution or industrial design created under a contractual work, the right to apply for a Protection Title shall belong to the provider of such work unless stipulated otherwise in the contract;

- (d) Persons having the right to apply for a Protection Title for an invention, utility solution or industrial design in accordance with (a), (b) or (c) of this subsection may transfer that right (including the right in an application already filed) to other persons in writing.

(1) The Right to Apply for a Protection Title for a Trademark:

- (e) Natural or legal persons or other entities legally engaged in production shall have the right to apply for a Protection Title for a trademark to be used on their products;
- (f) Natural or legal persons or other entities legally engaged in services shall have the right to apply for a Protection Title for a service mark to be used for their services;
- (g) Natural or legal persons or other entities legally engaged in the trade in products manufactured by a third party have the right to apply for a Protection Title for a trademark to be used for such products, provided the manufacturer does not use such trademark for the respective products and the manufacturer does not object to such an application;
- (h) For a collective mark, the right to apply for a Protection Title belongs to the natural or legal persons representing the collective of natural or legal persons or other entities who abide by a common regime for the use of the respective trademark;
- (i) The right to apply for a Protection Title for a trademark (including the right in an application already filed) is transferable in the same manner as is the case for inventions, utility solutions or industrial designs.

(2)

(2) The Right to Apply for a Protection Title for an Appellation of Origin:

- (a) Natural or legal persons or other entities engaged in the production of, or trade in, products with peculiar characteristics attributed to a country or locality of a geographical name in compliance with the provisions of Section 7 of this Decree have the right to apply for a Certificate of the Right to Use the appellation of origin for their products;
- (b) Foreign natural or legal persons enjoying the protection of an appellation of origin in their respective home countries shall have the right to apply for a Certificate of the Right to Use the appellation of origin for their products in the Vietnamese market;
- (c) The right to apply for a Certificate of the Right to Use an appellation of origin is not transferable.
- (d) Any organization or individual doing business in a territory with a geographical name identical to an appellation of origin, as well as any administrative body of a territory with a geographical name identical to an appellation of origin are entitled to file an application for the registration of the appellation of origin.

Section 15: Exercise of the Right to Apply for a Protection Title

- (1) In order to enjoy the protection of industrial property rights, persons who have the right to apply for a Protection Title as provided for in Section 14 of this Decree shall file an application for such a Protection Title with the National Office of Industrial Property. An application for a Protection Title shall be examined by the National Office of Industrial Property subject to the procedures provided for in this Chapter. The Protection Title shall be granted on the basis of the result of the examination of the application. The respective scope, contents and term of the industrial property rights shall be determined by the Protection Title.
- (2) Vietnamese natural or legal persons or other entities may, whether directly or through an empowered industrial property agent, carry out the filing of an application for a Protection Title and related procedures;

- (3) Natural or legal persons from member countries of the Paris Convention or countries that have signed an agreement on mutual protection with Vietnam or that have accepted the principle of reciprocity with regard to the protection of industrial property, may carry out the filing of application for a Protection Title and related procedures as follows:
 - (a) If they are foreign natural persons resident in Vietnam or foreign legal persons having a legal representative or a real and effective industrial or commercial establishment in Vietnam they may, directly or through an empowered industrial property agent, carry out the filing of an application for a Protection Title and related procedures;
 - (b) If they are foreign natural persons not resident in Vietnam or foreign legal persons without a legal representative or a real and effective industrial or commercial establishment in Vietnam, they may carry out the filing of an application for a Protection Title and related procedures only through an empowered industrial property agent.
- (4) The applicant shall guarantee the truthfulness of information in relation to the right to apply for a Protection Title and the persons in the application and the creator as stated in the application. When a Protection Title is cancelled because the above-mentioned information has not been truthful, the owner of the Protection Title shall be responsible for all consequences caused by exercising this right.

Section 16: The First-to-File Principle

- (1) Where two or more applicants have filed applications for Protection Titles for the same invention, utility solution or industrial design, or the same trademark for the same goods or services, a Protection Title may only be granted to the first applicant.
- (2) Where two or more applicants have filed applications for Protection Titles for the same invention, utility solution or industrial design, and the applications bear the same priority date, the National Office of Industrial Property shall request the applicants to file a single application, and, if granted, the Protection Title shall belong to all applicants as co-owners. In case one of the applicants disagrees no Protection Title shall be granted.
- (3) If there are two or more invention or utility solution applications for one single technical solution bearing the same priority dates, the National Office of Industrial Property shall request the applicants to agree upon the form of protection and combine the applications as provided for in (2) of this Section.
- (4) If two or more applicants have filed applications for Protection Titles for the same trademark to be used on goods or services of the same kind bearing the same priority dates, the National Office of Industrial Property shall request the applicants to allow one of them to proceed with the application and the others to withdraw their applications on reasonable conditions. In case the applicants cannot reach an agreement, all applications shall be refused.
- (5) If two or more applicants have filed applications for Protection Titles for an identical appellation of origin, all applicants may be granted Certificates of the Right to Use the appellation of origin upon its registration.

Section 17: Priority Rights

- (1) Applicants for a Protection Title for an invention, utility solution, industrial design or trademark may claim priority on the basis of an application which has been filed earlier in another country for the same subject matter or on the basis of an exhibition of the object described in the application at an official, or officially recognized international exhibition, organized in Vietnam or a third country, if:

- (a) The third country where the earlier application was filed or where the exhibition was organized is a member of the Paris Convention or has signed a bilateral agreement on priority rights with Vietnam, or applies the principle of reciprocity in this respect;
 - (b) The applicant is a national or resident or has a real and effective industrial or commercial establishment in a country which satisfies the conditions under (a) of this subsection;
 - (c) The application for a Protection Title for an invention, utility solution, industrial design or trademark has been filed in Vietnam within the time limit provided for in (2) of this Section.
- (2) The time limit for filing an application for a Protection Title claiming priority is stipulated as follows:
- (a) If the applicant claims priority under the Paris Convention, the time limit for filing an application for a Protection Title shall be 12 months from the first filing date of an application for an invention or utility solution, or 6 months from the first filing date of an application for an industrial design or trademark, or 6 months from the date the object is displayed at an exhibition in relation to an application for an invention, utility solution, industrial design or trademark;
 - (b) If the application for a Protection Title for an invention or utility solution has been filed under the PCT, the above-mentioned time limit shall be 21 months in relation to the international application with the designation of Vietnam, or 31 months in relation to the international application with the election of Vietnam, if the election has been effected within 19 months from the first filing date;
 - (c) If priority is claimed under a bilateral agreement or on the basis of reciprocity, the time limit for filing an application for a Protection Title shall be determined in accordance with such an agreement or arrangement.
- (3) An application with an accepted priority claim shall bear as the priority date the first filing date or the date the object has first been displayed at an exhibition, or the date provided for by a bilateral agreement.
- (4) In order to enjoy a priority right, the applicant shall specify the international convention which serves as the basis for claiming such a priority right, pay the respective fee and shall, within 3 months from the date of filing the application, send a copy of the first application certified by the respective receiving office or certification of display at an exhibition. Failure to submit the above documents by the applicant within the time limit will result in the loss of the priority right.
- (5) If the application contains multiple priority claims of different priority dates, the respective time limits shall be counted from the earliest date among the accepted priority dates.
- (6) The applicant may withdraw a claim for priority in order to defer the publication of the application.

Section 18: The Examination of Applications for a Protection Title

- (1) All applications for a Protection Title, including international applications under the PCT where the National Office of Industrial Property is the receiving office, shall have their formal requirements examined by the National Office of Industrial Property.

The purpose of such examinations is to examine whether the application satisfies the requirements of an officially accepted application. If the application is considered to be officially acceptable, an official filing date, an official filing number, and a priority date shall be determined.

- (2) All officially accepted applications for Protection Titles shall be published in the Official Gazette of Industrial Property by the National Office of Industrial Property.

- (3) Substantive examinations are carried out by the National Office of Industrial Property for all applications for a Protection Title for trademarks, industrial designs or appellations of origin, if the applications have been officially accepted and the applicants have paid the due examination fees, and all applications are in accordance with (?) the international registration of marks under the Madrid Agreement.

Substantive examinations for inventions or utility solutions shall only be carried out for officially accepted applications at the request of the applicant or a third party, if the request is submitted to the National Office of Industrial Property within the prescribed period of time.

The purpose of substantive examinations is to evaluate the protectability of subject matter claimed in the application in respect of the protection criteria and to determine the respective scope of protection.

- (4) Procedures and time limits for formality examinations and publications and for substantive examinations shall be regulated by the Minister of Science, Technology and Environment.

Section 19: The Withdrawal of Applications for a Protection Title

- (1) At any time before the issuance of the decision to grant or refuse a Protection Title, the applicant shall have the right to make a written withdraw the application from the National Office of Industrial Property.

If a statement of withdrawal is submitted through an industrial property agent, the power of attorney shall clearly state the authorization for the withdrawal of the application.

- (2) At the moment an applicant states the withdrawal of the application, all further procedures related to the application shall be suspended and fees which have been paid for further procedures shall be refunded to the applicant.

(3)

- (3) Applications for inventions, utility solutions or industrial designs which have been withdrawn or considered as withdrawn before publication and applications for trademarks which have been withdrawn or considered as withdrawn shall be deemed as never having been filed with the National Office of Industrial Property.

Section 20: Third Party Opinions in Relation to Granting or refusing of Protection Titles

During a substantive examination, any third party shall have the right to present opinions in relation to the granting or refusal of a Protection Title to applications which have been published in the Official Gazette of Industrial Property. If the third party objects to the granting of a Protection Title, it shall present the reasons and provide the documents or excerpts that the reasons are based upon.

Such third parties' opinions shall be made in writing and sent to the National Office of Industrial Property. The party presenting such opinions shall not be object to any fees.

Section 21: The Consultation of Specialists

In order to ensure that the granting of a Protection Title complies with the conditions provided by law, the National Office of Industrial Property shall have the right to consult specialized organizations and experts in related fields during a substantive examination. The organizations and experts who the National Office of Industrial Property consults shall undertake their obligations in an honest and objective manner and shall be accountable for their opinions.

The organizations and experts who the National Office of Industrial Property consults shall be remunerated for presenting their opinion. The amount of remuneration shall be subject to the

quantity and quality of the opinion, but shall not exceed 40% of the fee for substantive examination of the respective object.

Section 22: The Request for Searches

- (1) From the date an application is officially accepted, the applicant for a Protection Title for an invention or utility solution shall have the right to ask the National Office of Industrial Property to carry out a search on the state-of-the-art as of the priority date. The applicant who asks for the search shall pay the due fees.
- (2) Within 3 months from the date the request for the search is received, the National Office of Industrial Property shall send the search result to the applicant.

Section 23: The Decision to Grant a Protection Title

- (1) If the invention, utility solution, industrial design or trademark satisfies the criteria of protection and the applicant has paid the due fees, the National Office of Industrial Property shall issue a decision to grant a Protection Title that clearly states the name and address of the person who is granted the Protection Title, the respective application number, filing date and priority date, the name of the industrial property agent, the full name of the creators of the invention, the utility solution or the industrial design, the name of the protected object, the name and number of the Protection Title, the scope and terms of the protection, or the decision of the acceptance of the protection of an internationally registered trademark under the Madrid Agreement.
- (2) If an appellation of origin satisfies the protection criteria and the applicant has paid the due fees, the National Office of Industrial Property shall issue a decision to register an appellation of origin that clearly states the name and address of the person requesting the protection, the number of applications, the filing date, the name of the industrial property agent; the appellation of origin, the boundaries of the respective territory, the list of products bearing the appellation of origin, the summary of the quality characteristics of the products, the name and address of the natural or legal persons who have the right to use the appellation of origin, and the registration number of the appellation of origin.
- (3) If an applicant for a Protection Title for an appellation of origin meets the conditions for the use of the registered appellation of origin, the National Office of Industrial Property shall issue a decision to grant a Certificate of the Right to Use an appellation of origin that clearly states the name and address of the beneficiary of the Certificate, the number of applications, the filing date, the name of the industrial property agent, the products bearing the appellation of origin produced by the beneficiary of the Certificate, the appellation of origin, its registration number, and the number of the Certificate.

Section 24: Protection Titles, Related Documents – the Issuance of Duplicates and Copies

At the request of natural or legal persons or other entities, the National Office of Industrial Property may issue a duplicate of the Protection Title to co-owners or copies of the first application for a Protection Title for the purpose of claiming priority abroad, and other copies of documents except for documents considered secret or not yet fit for publication.

At the request of the owner of a Protection Title, the National Office of Industrial Property may issue him or her a duplicate thereof for legitimate reasons.

The person requesting a duplicate or copy shall pay the due fees.

Section 25: The Notification of Refusals

In cases other than those provided for in Section 23(1), (2) or (3) of this Decree, the National Office of Industrial Property shall issue a notice of refusal to grant a Protection Title and shall state the reasons clearly. This notice shall be sent to the applicant and the person having requested substantive examination of the invention or utility solution, if applicable.

Section 26: The Contents, Registration and Granting of a Protection Title

- (1) The contents of a Protection Title shall be determined in accordance with the decision to grant the title. Except for information contained in the decision, the nature and scope of the protection and other necessary information related to the protected right shall be clearly stated.
- (2) The Protection Title shall be recorded in the National Industrial Property Registration Book (National Registry).
- (3) The Protection Title shall be sent to the applicant. If the applicant is a collective, the Protection Title shall be sent to the first person on the collective's list, and the name of this person shall be recorded in the National Industrial Property Registration Book as referred to in (2) of this Section. At the request of other persons in the collective, the National Office of Industrial Property may grant duplicates of the Protection Title, provided such persons pay the due fees.

Section 27: Appeals Against Decisions with Respect to the Establishment of Industrial Property Rights

- (1) The following persons shall have the right to appeal against Decisions and Notifications that relate to the establishment of industrial property rights by the National Office of Industrial Property:
 - (a) First appeal:

An applicant for Protection Titles shall have the right to file an appeal to the Director General of the National Office of Industrial Property with respect to the rejection of an application for a Protection Title or the refusal to grant a title;

An applicant seeking the international registration of trademarks through the Madrid Agreement has the right to file an appeal to the Director General of the National Office of Industrial Property with respect to the refusal to protect it in Vietnam;

An applicant for a well-known mark has the right to file an appeal to the Director General of the National Office of Industrial Property with respect to the refusal to recognize it as a well-known mark;

Any third party whose rights and interests are directly linked to the granting of Protection Titles, the acceptance of the protection of international registration trademarks through the Madrid Agreement or the recognition of well-known marks, shall have the right to file an appeal to the Director General of the National Office of Industrial Property with respect to his relevant decisions.
 - (b) Second Appeal, Litigation:

In the event of disagreements with the decision by the Director General of the National Office of Industrial Property, the appellant shall have the right to file a further appeal to the Minister for Science, Technology and Environment (second appeal) or to proceed with litigation according to the administrative procedures.
- (2) The appeal shall be presented in writing and shall clearly state the full name and address of the appellant; the number, date and contents of the decision or notice subject to the appeal, the number of the respective application for a Protection Title, the name of the object of protection as referred to in the application, the contents, reasons and arguments the appeal is

based on, and the exact request for the amendment or cancellation of the related decision or conclusion.

(3) Time limits for submitting the first appeal:

- 90 days from the date the appellant receives or knows about the notice referred to under (1)(a) or (b) of this Section, or
- Five (5) years from the date of entry into force of the Protection Title, and the international registration and during the whole period when the industrial property rights of the well-known trademark are protected. In the event that industrial property rights resulted from an unhealthy motive on the part of the applicant, the appeal can be submitted at any time during the validity of the Protection Title and the international registration.

The time limit for submitting the second appeal is 30 days from the expiry date of the term for handling the appeal stated in paragraph 4 of this Section if by that date the first appeal is not resolved, or from the date the appellant receives or knows the Decision of the first appeal.

If, due to unavoidable circumstances, the appellant could not exercise his right to appeal within the time limit, the time when the circumstances occurred shall not be included in the time limit for submitting an appeal.

(4) The term for resolving the first appeal is 30 days, and the term for the second appeal is 45 days from the date of receiving the appeal. The time for amending, and supplementing documents shall not be included in the time limit.

Appeals are dealt with in the order, and according to the procedures set forth in the Law on complaints and denouncements. The appellant shall pay the fees stated in the law.

Section 28: The termination of the Validity of Protection Titles

(1) Any third party shall have the right to file an application requesting the National Office of Industrial Property to terminate the validity of a Protection Title for reasons referred to in (2) of this Section.

The application requesting the termination of the validity of a Protection Title shall be handled in accordance with the procedures for appeals under Section 27(2), (3) or (4) of this Decree.

Should the application for the termination of the validity of a Protection Title be allowed under (2) of this Section, the Director General of the National Office of Industrial Property shall issue a decision to partly or entirely terminate the validity of the Protection Title and shall publish the decision in the Official Gazette of Industrial Property within 2 months of the decision date.

(2) The validity of a Protection Title shall be terminated in the following cases:

- (a) The owner of a Protection Title claims to relinquish the rights conferred by the Protection Title. In this case, the validity of the Protection Title shall be terminated from the date the relinquishment is announced;
- (b) The owner of a Protection Title has not paid the due fees for the maintenance of the Protection Title's validity in time. In this case, the validity of the Protection Title shall be terminated from the first year the maintenance fees have not been paid for;
- (c) The owner of a Trademark Registration Certificate or of a Certificate of the Right to Use an appellation of origin has not used the trademark or appellation of origin for 5 consecutive years prior to the request for termination of validity and does not have a legitimate reason for this. In this case, the validity of the Certificate shall be terminated from the first day after the period of 5 years;
- (d) The owner of a Trademark Registration Certificate or of a Certificate of the Right to Use an appellation of origin has died or no longer operates without a legal successor. In this

case, the validity of the Certificate shall be terminated at the time operations ended or when the owner of the Certificate died;

- (e) The geographical factors which determine the peculiar characteristics have changed, resulting in the loss of the peculiarity of such characteristics. In this case, the validity of the Certificates of the Right to Use the appellation of origin and the Decision on the registration of the appellation of origin shall be terminated on the same date provided for by the decision of the National Office of Industrial Property;
- (f) The owner of a Certificate of the Right to Use an appellation of origin is no longer able to meet his or her obligations in accordance with the provisions under Section 47(2) of this Decree.

Section 29: The Cancellation of the Validity of Protection Titles

- (1) Any third party has the right to file an application requesting the National Office of Industrial Property to cancel the validity of a Protection Title for the reason that the Protection Title has been granted contrary to the provisions of law, as stated in (2) of this Section.

The application requesting the cancellation of the validity of a Protection Title shall be handled in accordance with the procedures for appeals under Section 27(2), (3) or (4) of this Decree.

Should the application be allowed because the Protection Title has been granted contrary to the provisions of law, the Director General of the National Office of Industrial Property shall issue a decision to partly or entirely cancel the validity of the Protection Title and publish this decision in the Official Gazette of Industrial Property within 2 months of the decision date.

- (2) The Protection Title shall be entirely cancelled if there are grounds to substantiate the notion that its granting was inconsistent with applicable provisions of laws at the time of the granting of the Protection Title in the following cases:
 - (a) The person who has been granted a Protection Title was not entitled to apply for its grant and has not been transferred such a right by the entitled person;
 - (b) The right to apply for a Protection Title for an invention, utility solution or industrial design belongs to a number of natural or legal persons or other entities, one of whom has not agreed to the filing;
 - (c) The Protection Title for an invention, utility solution or industrial design incorrectly states the creator due to misinformation supplied deliberately by the applicant;
 - (d) The subject matter of the protection does not meet the relevant criteria.
 - The Protection Title shall have a part cancelled if that part does not satisfy the criteria for protection.
 - Upon cancellation, the cancelled part shall be considered as never having been valid.

Section 30: The Renewal of Validity of Protection Titles for Industrial Designs and Trademarks

- (1) The validity of the patent on industrial designs and the certificate for the registration of trademarks may be renewed on request by the owner of the Protection Title.
- (2) The Minister for Science, Technology and Environment shall stipulate the procedures for the renewal of the validity of Protection Titles.

Section 31: The Official Gazette of Industrial Property

- (1) The Official Gazette of Industrial Property, which is published by the National Office of Industrial Property, is a legal document which publishes information concerning the establishment, transfer, change, termination or cancellation of industrial property rights and their contents and scope of protection.
- (2) The information published in the Official Gazette of Industrial Property relates to:
 - (a) Officially accepted applications for Protection Titles;
 - (b) Protection Titles granted and registered, and trademarks protected in Vietnam through registration under the Madrid Agreement or other international agreements which Vietnam has signed;
 - (c) Decisions on the changes, terminations, cancellations or renewals of Protection Titles;
 - (d) Decisions on the registration of licensing agreements and the granting of non-voluntary licenses;
 - (e) Decisions on the registration of agreements on the transfer of ownership of industrial property objects;
 - (f) Decisions on the granting, revocation or change of contents of licenses of representation for industrial property attorneys or industrial property agents;
 - (g) Documents related to legislative activities on industrial property;
 - (h) Other necessary information related to the protection of industrial property rights.

Section 32: Fees

- (1) Natural or legal persons or other entities engaged (before the National Office of Industrial Property) in the establishment, maintenance, termination, renewal, change or transfer of industrial property rights as well as the appeal procedures concerning industrial property (before the competent authorities) are obliged to pay the due fees and official fees to the authorities carrying out the relevant procedures in accordance with this Section.

The National Office of Industrial Property and the competent authorities referred to above are obliged to collect fees and official fees in full and in timely fashion. The fees and official fees shall be transferred to the State budget in accordance with the State regulations on fees and official fees.

The authorities collecting fees and official fees shall be allowed to use part of the collected fees and official fees in accordance with State regulations on fees and official fees in order to improve the professional and operational capability and to encourage people directly carrying out the procedures to generate income.

- (2) The items and rates of such fees and official fees shall be regulated by the Ministry of Finance in coordination with the Ministry of Science, Technology and Environment, thus ensuring sufficient reimbursement for the related procedures, in accordance with the existing conditions and international customs.

Fees already paid for procedures no longer required to be carried out or left undone due to default of the responsible authority shall be refunded to the payer, with the refund being either certified by the recipient or requested by invoice.

THEIR RIGHTS AND OBLIGATIONS

Section 33: The Owners of Industrial Property Objects

Owners of industrial property objects are:

- (1) The persons to whom a Protection Title has been granted;
- (2) The owner of an international registration of a trademark as per the Madrid Agreement, with the registration being accepted for protection in Vietnam; the owner of a trademark which is recognized as a well-known one;
- (3) Natural or legal persons or other entities to whom the right of ownership of an invention, utility solution, industrial design or trademark has been legally transferred.

Section 34: The Use of Industrial Property Objects

The following acts shall qualify as the uses of industrial property objects provided for in Article 796(1)(a) and 797(1)(a) of the Civil Code if undertaken for commercial purposes.

- (1) For inventions and utility solutions:
 - The manufacturing of a protected product;
 - The application of a protected process;
 - The exploitation of a protected product;
 - The putting into circulation, advertising, offering or storing for sale of a protected product or a product manufactured by a protected process;
 - The importing of a protected product or a product manufactured by a protected process.
- (2) For industrial designs:
 - The production of industrial designs;
 - The putting into circulation, the advertising, offering or storing for sale of industrial designs;
 - The importing of a product on which a protected industrial design has been applied.
- (3) For trademarks and appellations of origin:
 - The applying of a protected trademark or appellation of origin on goods or their packaging, or on service facilitates or transaction documents used in business activities;
 - The circulating, offering, advertising or storing for sale of goods bearing a protected trademark or appellation of origin;
 - The importing of goods bearing a protected trademark or appellation of origin.

Section 35: The Transfer of the Right of Use (licence)

- (1) In accordance with Article 796(1)(b) of the Civil Code and the provisions of this Section, the owner of an industrial property right over an invention, utility solution, industrial design or trademark shall be entitled to transfer the right to use his or her industrial property object entirely or in part to other natural or legal persons or other entities.

The owner of a Certificate of the Right to Use an appellation of origin shall not be entitled to transfer the right to use his appellation of origin.

- (2) The transfer of the right to use an industrial property object shall be effected through a written contract (“licensing agreement”). A licensing agreement shall have legal effect only upon registration with the National Office of Industrial Property in accordance with the provisions of Section 42 of this Decree.

Section 36: Actions Against the Infringement of Industrial Property Rights

- (1) In accordance with Section 796(1)(c) of the Civil Code, the owner of an industrial property object is entitled to request a competent State authority to deal with the matter or else initiate proceedings at a competent court against any third party for having used the industrial property object except in cases provided for in Sections 50, 51, 52 of this Decree. The owner shall have the right to request an injunction and to demand compensation for damages from the infringer.

Before bringing the matter to the competent authority or the court, the owner of an industrial property object may notify the infringing party of the industrial property object’s ownership and request the infringement to stop.

- (2) The owner of an invention, utility solution or industrial design shall have the right to initiate proceedings at a competent court against any person who has not paid due compensation in accordance with the provisions in Section 10(2) of this Decree.
- (3) The owner of an industrial property object may take actions provided for in subsections (1) and (2) above by himself or herself, or through an empowered person.

Section 37: The Transfer of the Ownership (assignment), the Inheritance, and the Relinquishment of Industrial Property Rights

In accordance with Article 796(2) of the Civil Code, the assignment, inheritance and relinquishment of an industrial property right shall comply with the following provisions:

- a) Ownership rights over a trademark may only be inherited by a single natural or legal person or a single other entity. The successor to the ownership right over the trademark has to meet the requirements for the right to apply for the respective Protection Title.
- b) Upon the assignment of ownership rights over inventions, utility solutions, industrial designs or trademarks, all rights and obligations under the Protection Title shall be fully assigned by the assigning party (assignor) to the recipient (assignee). The assignee shall become the owner of the industrial property object from the date the assignment contract is registered with the National Office of Industrial Property. Rights and obligations between the assignor and a third party may be assigned to the assignee under the assignment contract.
- c) From the date a licensing agreement has been registered with the National Office of Industrial Property, the licensee shall have the right to use the industrial property object according to the scope, terms and conditions provided for in the licensing agreement as registered.
- d) The owner of an industrial property object shall not relinquish his or her right therein when subject to a valid license, unless the licensee agrees to a termination of the licensing agreement before its due expiry date. This provision shall not apply to cases where one or a number of co-owners relinquish their respective parts of the right while being succeeded by the remaining co-owners.

Section 38: Restrictions on Transfer Agreements

- (1) The transferor shall only conduct a transfer of his or her right within the scope and the terms of protection. The transferor shall guarantee that the transfer does not infringe rights of third

parties. In the event that a dispute arises over the transfer of industrial property rights, the transferor shall be responsible for settling such a dispute.

- (2) If the industrial property right belongs to several owners, each of the co-owners shall be entitled to transfer his or her respective part of the right on condition that the other co-owners so agree, or have no legitimate reasons to disagree or do not wish to obtain the parts of the right as transferees.
- (3) Industrial property rights over appellations of origin are not transferable.
- (4) The transfer of industrial property rights over trademarks shall not cause confusion over the characteristics or origin of the goods or services bearing the trademarks.

The transfer the ownership right on an associated mark shall be concurrently carried out together with all associated marks.

The transfer of the ownership of a well-known mark must ensure the goodwill of the traders of the goods and services bearing the well-known mark.

Section 39: The Transfer of Contracts

- (1) Any contractual transfer of industrial property rights shall be made in writing. Any oral agreement or agreement by letter or telegram shall not be recognized as a valid transfer contract and shall not have legal effect.

In case the transfer of industrial property rights forms part of another contract, it shall constitute a separate part from the rest of the contract and shall comply with provisions of this subsection.

- (2) The legal requirements of a transfer contract over industrial property rights shall be regulated by the Minister of Science, Technology and Environment.

Section 40: The Obligations of Parties

- (1) The transferor has the following obligations:

- i. To register the contract in accordance with Section 42 of this Decree unless the registration has been carried out by the transferee;
- ii. To pay transfer tax in accordance with the law on taxes;
- iii. To settle disputes with any third party affected by the transfer;
- iv. To take necessary and appropriate measures against acts of infringement by third parties detrimental to the licensee in case of a licensing agreement. Unless the licensor has taken such measures within 3 months after having been informed of such an infringement and having been asked to take action by the licensee, the latter may request the competent State authorities to deal with the act of infringement.

- (2) The transferee shall have the following obligations:

- v. To register the contract in accordance with Section 42 of this Decree unless the registration has been carried out by the transferor;
- vi. To pay the transferor the due amount in such a manner as agreed upon by the parties;
- vii. To ensure the same quality of goods as produced by the transferor by being subjected to a control on the quality of goods bearing the respective trademark;

- viii. To indicate on the goods, or packaging that the goods have been produced under license and to indicate the name of the licensor.

Section 41: The Price and Mode of Payment for the Transfer of Industrial Property Rights

The price and method of payment for the transfer of industrial property rights shall be agreed upon by the parties in accordance with the provisions of law on technology transfer.

Section 42: The Registration of Contracts

- (1) Any contract of transfer of an industrial property right, even if it is part of another contract, shall be registered with the National Office of Industrial Property in accordance with the provisions of this Section.
- (2) The requirements as to the documents and procedures for the registration of a transfer contract shall be regulated by the Minister of Science, Technology and Environment.
- (3) Any change related to a registered transfer contract including a change in the licensee shall be subject to the same procedures as the transfer.

Section 43: The Automatic Termination of an Invalidation of a Contract

A transfer contract shall be automatically terminated if the industrial property right that is the object of the contract is terminated, or else subject to forces which make the contract impossible to implement.

A transfer contract shall automatically be invalidated if the industrial property right that is the object of the contract is cancelled.

Section 44: The Obligation to Pay Remuneration to the Creator

- (1) If in accordance with Article 798(1) of the Civil Code the creator is not the owner or co-owner, or unless there is an other agreement between the creator and the owner of an industrial property right with respect to an invention, utility solution or industrial design, the owner shall have the obligation to remunerate the creator or creators for the creation of the invention, utility solution or industrial design.
- (2) Unless otherwise agreed between the creator and the owner of an industrial property right, the amount and the due date of remuneration shall be in accordance with the following provisions:
 - (a) The minimum level of remuneration for the creator of an invention, utility solution shall be 10% of the profit derived each year from the use of the invention or utility solution, or 15% of the total amount of money the owner of the industrial property right has received upon granting a license, including a non-voluntary license;
 - (b) The minimum level of remuneration for the creator of an industrial design shall be 2% of the profit derived from the use of the industrial design each year; or 15% of the total amount of money the owner of the industrial property right has received upon granting a license, including a non-voluntary license;
 - (c) The payment of remuneration to the creator shall be made not later than 2 months after each year of use or no later than 1 month from the date the owner of the industrial property right has received money for the granting of a license, including a non-voluntary license.

- (3) If there is an agreement between the creator and the owner of an industrial property right other than that provided for in subsection (2) above, the payment of remuneration shall be made in accordance with such an agreement.

Section 45: Maintenance Fees

In accordance with Article 798(2) of the Civil Code, the owner of an industrial property right shall pay a fee for the maintenance of the Protection Title's validity. In cases where the owner of an industrial property right fails to pay such a maintenance fee, the Protection Title shall be terminated in accordance with Section 28(2)(b) of this Decree.

Section 46: The Obligation to Use Industrial Property Objects

- (1) The owner of an invention, utility solution or industrial design that has a special impact on national security or defense, or on the protection of public health or the environment shall be obliged to use the invention, utility solution or industrial design to satisfy the needs of the State and/or society.

In the event that the owner of an invention, utility solution or industrial design mentioned above has tried his or her best, but has failed to satisfy the needs of the State and/or society, the owner will be obliged to grant a license on reasonable conditions to a person willing and able to use the invention, utility solution or industrial design.

- (2) The owner of a trademark or appellation of origin shall have the obligation to use the trademark or appellation of origin continuously and to not suspend the use of such a trademark or appellation of origin for more than 5 consecutive years. Failing to do so will subject the validity of the Protection Title for such trademark or appellation of origin to cancellation in accordance with the provisions of Section 28(2)(c) of this Decree.
- (3) For the purpose of this Section, the licensing of an industrial property object shall not be considered to be in effect.

For the purpose of this Section, the use of an industrial property object by the licensee shall be considered as being in effect.

Section 47: The Rights and Obligations Regarding Appellations of Origin

- (1) Those who have been granted a Certificate of the Right to Use an appellation of origin shall have the right to the following:
 - (a) To use the appellation of origin for such products as specified in the list of registered products;
 - (b) To call on the competent State authority to compel other persons to stop infringing acts and pay compensation for damages caused by the illegal use of such appellations of origin or signs confusingly similar thereto, including the case where the true origin of the product is indicated or the appellation of origin is translated into another language or the use is accompanied by "kind", "type", "imitating", or words to that effect.
- (2) Those who have been granted a Certificate of the Right to Use an appellation of origin shall have the following obligations:
 - (a) To ensure the peculiar quality or characteristics of products bearing the registered appellation of origin;
 - (b) To comply with the requests of and create favourable conditions for the competent State authorities responsible for the controls of the quality of goods and the organizations

responsible for the examination of the peculiar qualities and characteristics of products that bear the appellation of origin, when necessary.

Section 48: The Rights of Creators

- (1) The creator(s) of inventions, utility solutions and industrial designs have the following rights:
 - (a) To be named in the Protection Title, and in the National Registration Book on inventions, utility solutions or industrial designs and in documents published in relation to such people as the creator;
 - (b) To receive adequate remuneration from the owner of an industrial property right in accordance with Section 44 of this Decree;
 - (c) To take action against an infringement of the above rights.
- (2) The right of remuneration and the right to take action against the infringements referred to in subsection 1(b) and (c) of this Section may be assigned and/or inherited in accordance with the law.

Chapter 5

THE LIMITATIONS ON THE USE OF INDUSTRIAL PROPERTY RIGHTS AND THE INFRINGEMENTS OF INDUSTRIAL PROPERTY RIGHTS

Section 49: Conditions for Exercising Industrial Property Rights

In exercising his or her rights, the owner or licensee of an industrial property object may not contravene the provisions of the law, or damage the interests of the State or the public, or infringe the legitimate rights or interests of others. Should the exercise of industrial property rights lead to one of the above-mentioned violations or offenses, the industrial property right may not be exercised.

Section 50: The Rights of Prior Use of Inventions, Utility Solutions or Industrial Designs

- (1) If, before the filing date of an application for a Protection Title for an invention, utility solution or industrial design, a natural or legal person or another entity has used the invention, utility solution or industrial design independently from the owner, the former has the right to continue to use the industrial property subject matter within the scope or volume of the use before the filing date ("the right of prior use"). The owner of the Protection Title shall not exercise his or her right or the provisional rights against such natural or legal persons or other entities, if the scope or volume of the use has not been increased compared with the use before the filing date.
- (2) If after the filing date of an application for a Protection Title mentioned in (1) of this Section, a natural or legal person or an other entity has increased the scope or volume of use of the industrial property object in comparison with the scope or volume of use before that date, the increase shall not be covered by the right of prior use.
- (3) The person enjoying the right to the prior use shall not be entitled to transfer the right of prior use to others except for when the transfer of all the rights to prior use are transferred together with the whole business where the prior use takes place.

Section 51: Licensing Upon the Decision of the Competent State Authority (“Non-Voluntary Licence”)

- (1) A non-voluntary licence refers to the compulsory granting of permission by the owner of an industrial property right, or his or her licensee, to another natural or legal person or another entity to use the whole invention, utility solution or industrial design upon the decision of the competent State body as provided for in this Section.
- (2) The owner of industrial property rights shall be forced to grant a non-voluntary license under the conditions provided for in Article 802 of the Civil Code.

The provisions set forth in paragraph 1 of Article 802 of the Civil Code shall not apply to the four (4) year period of the filing date or the three (3) year period of the Protection Titles granting date.

The industrial property rights owner who is forced to grant a non-voluntary license has the right to request the termination of the non-voluntary license when the circumstances that resulted in the granting of a non-voluntary license do not exist and can not exist any more, provided that the termination will not cause any damage to the licensee.

- (3) The Ministry of Science, Technology and Environment is the competent State agency that has the authority to consider requests for a non-voluntary license, and to issue the decision for the granting or cancellation of a non-voluntary license.
- (4) Documents for the request for a non-voluntary license shall comply with the requirements for formality and content in accordance with the regulations issued by the Minister of Science, Technology and Environment.
- (5) Within 15 days of the receipt of the documents requesting a non-voluntary license, the Ministry of Science, Technology and Environment shall notify the owner of the industrial property right, or his or her licensee for the whole invention, utility solution or industrial design, and shall ask for an opinion in writing within 30 days from the date of notice.

If necessary, the Ministry of Science, Technology and Environment shall ask the parties involved to re-negotiate in order to resolve disputes and agree on a voluntary contractual license.

Unless an agreement on a voluntary license has been reached or the arguments given for objecting to a voluntary license by the rights holder are unreasonable, the Minister of Science, Technology and Environment shall, within 3 months from the date of receipt of the documents of request, issue a decision ordering a non-voluntary license to be granted. Otherwise, the Minister of Science, Technology and Environment shall issue a notice rejecting the request for a non-voluntary license.

- (6) In the decision for compelling the grant of a non-voluntary license, the Ministry of Science, Technology and Environment shall state licensing conditions that are consistent with the following provisions:
 - b. A non-voluntary license is a non-exclusive license;
 - c. A non-voluntary license is confined to the scope and time limit needed to meet the objectives of the license granting;
 - d. The non-voluntary licensee is not entitled to transfer the right to use derived from the license to the others, and shall not be entitled to grant a sub-license to the others unless the non-voluntary license is granted together with the transfer of the whole business that uses the license;
 - e. The non-voluntary licensee shall pay the licensor an amount of money equivalent to the economic value of the right to use, based on the non-voluntary license or the

equivalent to the price fixed in the contract on the non-voluntary license with a similar scope and time limit.

The decision to grant a non-voluntary license shall be published in the Official Gazette of Industrial Property within one month from the date of issue.

- (7) Within 1 month from the date the Minister of Science, Technology and Environment issues the decision ordering a non-voluntary license to be granted, the owner of an industrial property right, or his or her licensee over the whole invention, utility solution or industrial design, shall comply with this decision on the conditions stipulated therein.
- (8) The non-voluntary licensor has the right to file an appeal to the Minister of Science, Technology and Environment for a decision to rejecting his request.

The person requesting the non-voluntary license has the right to file an appeal to Minister of Science, Technology and Environment for a decision to rejecting his request.

The procedures for filing and handling an appeal provided for in Section 27 of this Decree shall also apply to the appeal to the Minister of Science, Technology and Environment under this paragraph, where the latter is handling the first appeal.

In the case of a disagreement with the decision of the Minister of Science, Technology and Environment, the appellant has the right either to file a further appeal to the Prime Minister according to the Law on complaints and denouncements or to proceed with litigation according to administrative procedures.

Section 52: Acts Beyond the Exclusive Rights of the Owner of Industrial Property Rights

- (1) The acts provided for in Article 803 of the Civil Code with regard to inventions, utility solutions and industrial designs shall not be considered as being within the scope of the exclusive rights of the owner of industrial property rights. Therefore, such an owner may not exercise the right of action against a third party engaging in the following usages:
 - (a) The use for non-commercial purposes;
 - (b) The use of products have that been put into the market place - including foreign markets - by the owner of the industrial property rights, the licensee, the non-voluntary licensee or the person entitled to prior use;
 - (c) The use for maintaining operations of foreign transport means temporarily entering or being in the territory of Vietnam.
- (2) Item (a) and relevant provisions of item (b), paragraph (1) of this Section shall also apply to trademarks and appellations of origin.

Section 53: Infringements of Industrial Property Rights and Violations of the Right of the Creators

- (1) A person other than the owner of an industrial property object who commits one of the usages outlined in Article 805 of the Civil Code and described in Section 34 of this Decree within the term of protection, and without the permission of the owner or without the right of prior use as provided for in Section 50 of this Decree, shall be considered as having committed an act of infringement of an industrial property right unless one of the exceptions mentioned in Sections 51 and 52 of this Decree applies.

The following acts shall also be considered as infringements of industrial property rights:

- (a) The use of industrial designs not essentially different from an industrial design which is under protection;

- (b) The use of signs identical to a trademark being protected by a Certificate for trademark registration or being protected by an international registration for goods and services similar to or related to goods and services indicated in the list registered together with the mark, or/and the use of signs similar to the trademark for goods and services of the same kind, or similar to or related to goods and services included in the list registered together with the mark, if such use would lead to confusion as to the origin of the goods.
 - (c) The use of signs identical or similar to a well-known mark or sign, when the signs used are in the form of a translation of meaning, or transliteration from the mark for any goods and services - including goods and services of a different kind and not related to goods and services that belong to the list of goods and services that bear the well-known mark - if such use may lead to confusion as to the origin of the goods or give the wrong impression as to the relationship between the user of the signs and the owner of the well-known trademark.
- (2) The owner of an industrial property object who fails to meet the obligation to pay remuneration to an guarantee the moral rights of the creator in accordance with the provisions set out in Section 48(1)(a) or (b) of this Decree shall be considered as having violated the rights of the creator of an invention, utility solution or industrial design.

Section 54: The Protection of Industrial Property Rights and the Right of the Creators

- (1) Industrial property rights and the rights of creators of inventions, utility solutions or industrial designs are protected by the State. Any act of infringement of an industrial property right or the rights of creators of inventions, utility solution or industrial designs is strictly prohibited and shall be dealt with by legal means according to the nature and extent of the infringement.
- (2) The exercise of the right to take action against the infringement of industrial property rights and the rights of creators of inventions, utility solutions or industrial designs shall be in accordance with the law on civil procedures.

Depending on its extent and consequences, the infringement of industrial property rights of the creators of inventions, utility solutions or industrial designs may be dealt with by administrative, civil or criminal procedures according to the law.

Chapter 6

INDUSTRIAL PROPERTY REPRESENTATIVES

Section 55: Definitions

The terms used in this Chapter shall be defined as follows:

“Industrial property agent” refers to a business whose registered activity is to provide representing services in the field of industrial property as stated by law.

“Industrial property attorney” refers to a professional member of an industrial property agent who has been granted an Industrial Property Attorney’s Certificate.

“Industrial property representative” refers to both an industrial property agent and/or an industrial property attorney.

Section 56: The Functions and Obligations of Industrial Property Representatives

- (1) Industrial property agents may carry out the following services:

- i. Represent others before the National Office of Industrial Property and competent State authorities to carry out procedures for the establishment and protection of industrial property rights;
 - ii. Offer counselling on matters relating to procedures for the establishment and protection of industrial property rights;
 - iii. Offer other services concerning the procedures for the establishment and protection of industrial property rights.
- (2) Industrial property attorneys shall directly carry out the representation of the industrial property agents of which they are members.

Section 57: The Rights and Obligations of Industrial Property Representatives

- (1) Industrial property representatives shall not represent and may not act on behalf of the National Office of Industrial Property or other authorities with respect to industrial property management.
- (2) In conducting their services, industrial property agents shall enjoy civil rights and be subject to the civil obligations as per the law.
- (3) Only those who have been granted Industrial Property Attorney's Certificates shall be permitted to act as industrial property representatives.

An industrial property attorney shall work only for the one industrial property agent to which he or she belongs.

Any service of representation shall be carried out on behalf of an industrial property agent. Industrial property agents and industrial property attorneys carrying out services shall be held accountable for their services.

- (4) Industrial property agents shall only act within the scope of their authorization and shall only re-authorize other industrial property agents if there is a written agreement from the client.
- (5) Industrial property agents shall not engage in the following activities:
 - iv. Simultaneously representing conflicting parties;
 - v. Withdrawing an application for a Protection Title, or claiming the relinquishment of the protection of a withdrawal of an appeal that is related to the application procedure (?) without clear instructions in writing;
 - vi. Divulging information concerning national security and national interests in the course of providing representative services.

- (6) In making transactions, or concluding a contract for representation, the industrial property attorney shall present a valid Industrial Property Attorney's Certificate.

Before entering into a service contract for representation, the industrial property agent and industrial property attorney shall clearly inform the client about items and rates of national official fees related to the establishment and protection of industrial property rights and the items and rates of fees of the industrial property agent in accordance with a fees schedule registered with the National Office of Industrial Property.

Industrial property agents shall not mislead or unduly pressure clients in concluding a service contract for representation.

- (7) Industrial property agents and industrial property attorneys shall have the following obligations:
 - vii. To keep secret all information and documents related to representation cases;

- viii. To correctly and adequately inform the client of all notices or requests by the National Office of Industrial Property or other competent authorities and to timely supply the client with the Protection Title and other decisions;
- ix. To defend the interests of the client by complying with requests from the National Office of Industrial Property or other competent authorities addressed to the client in timely fashion;
- x. To advise the National Office of Industrial Property or other competent authorities of any changes of name, address or other information concerning the client, if necessary.

(8) Industrial property agents shall relinquish their representation only if all unfinished works can be legally transferred to another industrial property agent.

Section 58: The Conditions for the Granting of a License of Representation

(1) Conditions for the granting of an Industrial Property Attorney's Certificate

In order to be granted an Industrial Property Attorney Certificate, a person must:

- xi. Be a Vietnamese citizen with the capacity to act under civil law;
- xii. Be a resident of Vietnam;
- xiii. Have a university degree in legal or technical sciences;
- xiv. Hold a certificate of graduation of a regular training course on industrial property or have been involved directly in professional works on industrial property legal affairs for 5 consecutive years or more, or have directly carried out the examination of industrial property applications in a national or international office of industrial property for 5 consecutive years or more;
- xv. Hold a valid certificate of qualification on current industrial property law issued by the National Office of Industrial Property;
- xvi. Not be concurrently working for a non-business State office or organization.

(2) Conditions for the granting of an Industrial Property Agent's Certificate:

In order to be granted an Industrial Property Agent's Certificate, a person must:

- xvii. Be an organization which has been established under the Enterprise Law;
- xviii. Be an organization without foreign invested capital;
- xix. Be engaged in services of representation in the field of industrial property (stipulated in the Charter and Business Registration Certificate);
- xx. Have at least two official professional members that are industrial property attorneys, one of whom is the head of the organization or is authorized by the head of the organization to represent the organization.

Section 59: The Procedures for Granting an Industrial Property Attorney's Certificate and an Industrial Property Agent's Certificate

1. The procedure for the submission and consideration of an application for an Industrial Property Attorney's Certificate is regulated by the Minister of Science, Technology and Environment.

The National Office of Industrial Property under the Ministry of Science, Technology and Environment is the State authority that has the competence to grant Industrial Property Attorney's Certificates.

2. The state authority responsible for granting business registration certificates shall be the authority responsible for granting an Industrial Property Agent's Certificate when all conditions provided for in paragraph 2, Section 58 of this Decree are met. The competent authority shall be entitled to consult with the National Office of Industrial Property on the eligibility of the organization to become an industrial property agent.

After granting an Industrial Property Agent's Certificate, the competent authority must inform the National Office of Industrial Property of the grant so that the latter can make a registration in the National Industrial Property Registrar.

Individuals who have been granted an Industrial Property Attorney's Certificate and organizations which have been granted an Industrial Property Agent's Certificate shall be recorded in the National Industrial Property Registrar.

Section 60: The Fees and Official Fees for Representation

- (1) Industrial property agents shall list items and rates of official fees and fees for services of representation in a schedule.

The national official fees and the fees for services shall be clearly specified in the schedule. Charges for services the industrial property agent does not actually conduct shall not be included in the schedule.

- (2) Actual service fees (excluding national official fees) paid by clients shall be subject to taxation in accordance with the law.

Actual service fees shall not exceed the rates provided for in the schedule. The collection of official fees and fees for services of representation shall be published and shall comply with regulations on finance. At the request of the competent authorities, industrial property agents shall be liable to report on official fees and fees for industrial property services.

Section 61: The Revocation of an Industrial Property Attorney's Certificate and the Revocation of an Industrial Property Agent's Certificate

- (1) Conditions for the revocation of an Industrial Property Attorney's Certificate and an Industrial Property Agent's Certificate

- (a) The National Office of Industrial Property shall revoke an Industrial Property Agent's Certificate and delete the person's name from the list of industrial property attorneys in the following cases:

- xxi. If the person who has been granted the Certificate has ceased to act as an industrial property representative;
- xxii. If the person who has been granted the Certificate no longer adequately satisfies the criteria specified in Section 58(1) of this Decree;
- xxiii. If the person who has been granted the Certificate has committed serious defaults in the course of his or her profession to the detriment of the legitimate interests of the client or other persons or has caused damage to the reputation of State bodies and/or the State.

- (b) The National Office of Industrial Property shall request that the State authority responsible for granting business registration certificates revoke an Industrial Property Agent's Certificate or

delete the business activity as industrial property representation (if this is just a part of the organization's business activities) in the following cases:

- xxiv. The industrial property agent no longer satisfies the criteria specified in Section 58(2) of this Decree;
- xxv. The industrial property agent has violated provisions of the law, especially the provisions of this Chapter.

The competent State authority shall inform the National Office of Industrial Property of the revocation of the Industrial Property Agent's Certificates so that the latter deletes the organization whose Industrial Property Agent's Certificates has been revoked from the National Industrial Property Registrar.

- (2) The decision on the revocation of an Industrial Property Attorney's Certificate and on an Industrial Property Agent's Certificate shall be published in the Official Gazette of Industrial Property.
- (3) In case an Industrial Property Agent's Certificate is revoked, all unfinished procedures to be carried out by the agent shall be suspended and the client shall be allowed to restore the procedures within 3 months from the date of publication of the decision on the revocation of the Certificate in the Industrial Property Official Gazette.

Chapter 7

THE STATE MANAGEMENT OF INDUSTRIAL PROPERTY ACTIVITIES

Section 62: The State Management of Industrial Property Activities

- (1) The Government centralizes the state management of industrial property activities.
- (2) The State management of industrial property activities is comprised of the following:
 - (a) The enacting of laws, regulations, policies, strategies, reorganisation and planning that is related to the development of industrial property activities;
 - (b) The organizing and conducting of the procedures for establishing industrial property rights;
 - (c) The protection of the legitimate interests of the State and organizations and individuals in the field of industrial property;
 - (d) The organizing of the enforcement of laws, regulations and policies on industrial property;
 - (e) The organizing of industrial property information activities;
 - (f) The management of consultation activities and industrial property representatives;
 - (g) The training and development of human resources in the field of industrial property;
 - (h) The conducting international cooperation in the field of industrial property;
 - (i) The provision of guidance, inspection, and control over the implementation of policies, and industrial property laws;
 - (j) The handling of appeals and denouncements and infringements of industrial property laws.

Section 63: The Responsibilities of State Authorities Responsible for the Management of Industrial Property

- (1) The Ministry of Science, Technology and Environment is the Governmental agency that has the role of being the State's manager of industrial property throughout the country. It is responsible for the organization and implementation of the State's regime, policy and legal provisions on industrial property.
- (2) The National Office of Industrial Property under the Ministry of Science, Technology and Environment is the State authority responsible for assisting the Minister of Science, Technology and Environment to fulfil the responsibilities mentioned in (1) of this Section.

The National Office of Industrial Property shall have the following functions, powers and obligations:

- (a) To be the State authority responsible for granting Protection Titles for industrial property rights at the request of natural or legal persons or other entities;
 - (b) To carry out the procedures for terminating, cancelling or renewing the validity of Protection Titles, and for the registration of contracts on the transfer of industrial property rights;
 - (c) To apply measures for the protection of the legitimate interests of the State, natural persons and entities in the field of industrial property; to cooperate with other State authorities and social organizations in order to apply measures for the protection of industrial property rights and to ensure that the legal provisions on industrial property are strictly implemented;
 - (d) To organize information activities on industrial property;
 - (e) To examine professional qualifications and issue Industrial Property Attorney's Certificates and supervise industrial property agents in technical and professional aspects;
 - (f) To conduct professional direction and organize technical and professional training on industrial property for competent authorities employed in Ministries, localities and other entities;
 - (g) To conduct international cooperation activities in the field of industrial property within the scope of authorization.
- (3) The Ministries, the organs at ministerial level, the organs under the Government, and the People's Committees of provinces and cities directly under the Central Government, are responsible for the organization, direction and management of industrial property activities in their branch or locality within the scope of their functions and duties.

The organs for the management of science, technology and environment at the branch and locality level are responsible for helping the heads of branches and localities to implement the above functions and directly carry out the following tasks:

- (a) To propose to Ministers, Heads of organs at ministerial level and under the Government, as well as the Chairmen of People's Committees of provinces and cities, measures detailing the implementation of the policies of the State on industrial property and to organize the implementation of such measures. To draw up a plan for the development of industrial property activities and organize its implementation within respective Ministries, provinces and localities;
- (b) To organize management systems for industrial property activities in branches and localities and apply measures aimed at increasing the efficiency of such systems;
- (c) To organize the spreading of policies on industrial property and to cooperate with social organizations to conduct measures to promote innovative activities;
- (d) To assist subjects under the management of branches and localities in carrying out procedures for the establishment of industrial property rights in Vietnam and abroad;

- (e) To cooperate with the law-enforcing organs in matters of industrial property rights and to deal with violations of industrial property laws.

Section 64: The Responsibilities of Ministries and Localities

- (1) The Ministry of Science, Technology and Environment is responsible for stipulating the contents of the applications for a Protection Title, as well as the filing, the receiving and the conducting of examination procedures for applications for a Protection Title. It is also responsible for the procedures for approving and registering transfer contracts, the procedures for non-voluntary licensing, the regulations on the management of innovative activities and for cooperating with the Ministry of Defense and the Ministry of the Interior on stipulating procedures for the application, examination and granting of Protection Titles, as well as for the use, transfer and publication of secret inventions or utility solutions.
- (2) The Ministry of Finance shall cooperate with the Ministry of Science, Technology and Environment to stipulate the items and rates of industrial property service charges and official fees, and the regime of management and use of such service charges and official fees.
- (3) The Ministry of Agriculture and Rural Development and the Ministry of Marine Affairs shall conduct a survey of specialities, to determine the growth and production areas and qualitative characteristics of agricultural and aquatic products and to inform the relevant local People's Committees of the respective areas so that guidelines can be drawn up for the respective concerned natural persons or entities and thus enable them to register appellations of origin that are to be used for such agricultural specialities. The Ministry of Agriculture and Rural Development shall cooperate with the Ministry of Marine Affairs and the Ministry of Science, Technology and Environment to study and adhere to the Government Regulations on the protection of rights of natural persons and entities that have created new plant or animal varieties.
- (4) The Ministry of Public Health shall cooperate with the Ministry of Science, Technology and Environment in stipulating regulations on the use of trademarks for pharmaceutical products on the basis of compliance with regulations on trademarks in this Decree, and in studying and adhering to Government Regulations on the protection of the rights of creators of methods for the prevention, prognosis and treatment of diseases. It will also cooperate with the Ministry of Science, Technology and Environment and the Ministry of Industry to survey foods and beverages with peculiar properties and qualities characterized by the geographical conditions of the place of production of such products, and to determine areas with such geographical conditions and propose that the relevant local People's Committees draw up guidelines for natural persons and entities to register an appellation of origin to be used for such goods and beverages.
- (5) The Ministry of Education and Training shall cooperate with the Ministry of Justice and the Ministry of Science, Technology and Environment to organize the introduction of industrial property as a subject of teaching at universities and colleges.
- (6) The General Customs Department shall cooperate with the Ministry of Science, Technology and Environment to stipulate measures for industrial property border controls in relation to the import and export of goods.
- (7) The Ministry of Trade shall cooperate with the Ministry of Science, Technology and Environment to stipulate regulations on industrial property controls of goods produced and distributed in the market.
- (8) The Chairmen of People's Committees of provinces and cities directly under the Central Government shall conduct a survey of specialities produced in the concerned localities for the purpose of guiding persons and entities to proceed with the registration of an appellation of origin belonging to such localities.

Section 65: The Protection of National Interests and Social Interests in Industrial Property Activities

1. The establishment and exercise of industrial property rights shall not offend the interests of the State.
2. Industrial property objects owned by State organizations or by business operations wholly or partly owned by the State shall be properties of the State. These organizations or business operations shall be obliged to defend, and maintain the reputation of and develop the value of such properties.
3. Secret inventions or utility solutions
 - a. Inventions or utility solutions of Vietnamese nationals concerning national defense or security or of special economic value shall be considered as secret inventions or utility solutions;
 - b. The creator, the owner and the persons involved in preparing, filing or examining the application for protection or persons involved in the use of a secret invention or utility solution shall be liable to maintain the secrecy of such inventions or utility solutions in accordance with the regulations on the maintenance of national secrecy.
4. Vietnamese appellations of origin shall be national property. The right to use an appellation of origin shall belong to the owner of a Certificate of the Right to Use the appellation of origin and shall not be transferred in any form.
5. Only the owner of an industrial property object within the term of protection shall be allowed to indicate - by way of a sign - on the product or in advertisements or transactions for commercial purposes that a product is being protected or is subject to an exclusive right.

In cases where a product is manufactured under a license, such indications on products, in advertisements and transactions for commercial purposes shall be compulsory.

In cases where a product is manufactured in Vietnam under a foreign license or bears a trademark which may create the impression that the trademark is a foreign mark or has a foreign origin, an adequate and unabbreviated indication "Made in Vietnam" on the product shall be compulsory.

Section 66: The Handling of Administrative Violations in the Field of Industrial Property

Administrative violations in the field of industrial property shall be handled in accordance with "The Governmental Decree No. 12/1999/ND-CP of March 06, 1999 on the handling of administrative violations in the field of industrial property" and other related legal provisions.

Chapter 8

FINAL PROVISIONS

Section 67: Protection of the Industrial Property Rights of Foreigners

- (1) Foreign natural or legal persons have the right to request protection for their industrial property rights in Vietnam in accordance with the provisions of this Decree and shall enjoy all the same rights and be subject to all the same obligations as Vietnamese subjects, if the following hold true:

- (a) They are natural or legal persons that enjoy the rights accorded by the Paris Convention;
 - (b) They are natural or legal persons of countries that have signed an agreement on the mutual protection of industrial property with Vietnam or adopted the principle of reciprocity in matters of industrial property protection with regard to Vietnam for each other's natural or legal persons.
- (2) Nationals or legal persons of member countries of the Madrid Agreement shall enjoy all the rights and be subject to all the obligations relating to trademarks internationally registered with the designation of Vietnam, unless such a registration is refused by Vietnam.
 - (3) National or legal persons of member countries of the PCT can file an application for a Protection Title for inventions or utility solutions in Vietnam in accordance with the Treaty under the procedures set out by the Minister of Science, Technology and Environment.

In the event that the provisions of this Decree contravene the provisions of the international agreements to which Vietnam is a member, the provisions of such international agreements shall be applied.

Section 68: The Application of the PCT and the Madrid Agreement

The Ministry of Science, Technology and Environment shall set out the procedures for the handling of international applications for inventions or utility solutions under the PCT, and the procedures for the handling of trademark international registration applications with the designation of Vietnam under the Madrid Agreement and the procedures for preparing and filing an application for the international registration of industrial property rights that originate in Vietnam.

Section 69: Transitional Provisions

- (1) Applications for protection that are made on the basis of the Decree on the Protection of Industrial Property Rights dated 28 January 1989, and that have already been filed with the National Office of Industrial Property before 1 July 1996 - including applications filed by mail with a date of postage prior to such date - shall be handled in accordance with the Decree.
- (2) Protection Titles granted on the basis of the Ordinance on Innovations and Inventions of 1981, the Ordinance on Utility Solutions of 1988, the Ordinance on Trademarks of 1982, the Ordinance on Industrial Designs of 1988 or on the basis of the Decree on the Protection of Industrial Property Rights of 28 January 1989 shall continue to be valid under those legal agreements until the date of their expiry. After the above respective terms of validity have ended - according to the procedures for renewal provided in paragraph 2, Section 30 of this Decree and upon the owners' request - the Trademark Registration Certificates and Industrial Design Certificates shall be renewed, and patents for inventions shall be renewed until a time 20 years from the official acceptance date of the application.
- (3) All rights and obligations derived from the Protection Title (including Protection Titles granted under the Ordinance on industrial property of 28 January 1989) as well as the procedures for maintaining, renewing, correcting, assigning, and disputing the Protection Titles shall be regulated in accordance with this Decree.
- (4) All pending applications for Protection Titles filed after 01 July 1996 shall be processed in accordance with this Decree.

Section 70: Implementing Provisions

- (1) This Decree shall come into force as from the date of signing.
- (2) The Minister for Science, Technology and Environment shall be responsible for guiding the implementation of this Decree.

- (3) The Ministers, heads of organizations at ministerial and under the Government, the chairmen of the People's Committees of provinces or cities directly under the Central Government and the Director General of the National Office of Industrial Property shall be responsible for implementing this Decree.

On behalf of Government
Prime Minister
(signed and sealed)