

No: 16/2016/TT-BKHHCN

Ha Noi, June 30, 2016

CIRCULAR

on amendment and supplement of some articles of Circular No. 01/2007/TT-BKHHCN dated February 14, 2008 guiding the implementation of the Government Decree No. 103/2006/ND-CP of September 22, 2006 detailing and guiding the implementation of a number of articles on industrial property of the Intellectual Property Laws, which have been amended and supplemented by Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/TT-BKHHCN dated July 22, 2011 and Circular No. 05/2013/TT-BKHHCN dated February 20, 2013.

Pursuant to the Intellectual Property Law dated November 29, 2005 and the Law on amendment and supplement of some articles of the Intellectual Property Law dated June 19, 2009;

Pursuant to the Law on Complaints dated November 11, 2011;

Pursuant to Government Decree No. 103/2006/ND-CP of September 22, 2006 detailing and guiding the implementation of a number of articles on industrial property of the Intellectual Property Law and Government Decree No. 122/2010/ND-CP dated December 31, 2010 amending and supplementing some articles of Government Decree No. 103/2006/ND-CP;

Pursuant to Government Decree No. 20/2013/ND-CP of February 16, 2013 defining the functions, tasks, powers and organizational structure of the Ministry of Science and Technology;

At the proposal of Director Generals of the National Office of Intellectual Property and Department of Legislation;

The Minister of Science and Technology issues the Circular on amendment and supplement of some articles of Circular No. 01/2007/TT-BKHHCN dated February 14, 2008 guiding the implementation of Government Decree No. 103/2006/ND-CP of September 22, 2006 detailing and guiding the implementation of a number of articles on industrial property of the Intellectual Property Law, which have been amended and supplemented by Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/TT-BKHHCN dated July 22, 2011 and Circular No. 05/2013/TT-BKHHCN dated February 20, 2013.

Article 1. To amend and supplement some articles of Circular No.

01/2007/TT-BKHHCN dated February 14, 2008 guiding the implementation of the Government Decree No. 103/2006/ ND-CP of September 22, 2006 detailing and guiding the implementation of a number of articles of Law on Intellectual Property about industrial property, which have been amended and supplemented by Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/TT-BKHHCN dated July 22, 2011 and Circular No. 05/2013/TT-BKHHCN dated February 20, 2013 as follows:

1. To amend and supplement Point 1 as follows:

a) To amend and supplement Point 1.1 as follows:

“1.1 Industrial property rights arise or are established on the grounds as specified in Clause 3, Article 6 of the Law on Intellectual Property, Clauses 1, 2, 3 and 4, Article 6 of Government Decree No. 103/2006/ND-CP of September 22, 2006 detailing and guiding the implementation of a number of articles of the Intellectual Property Law about industrial property (hereinafter referred to as “Decree No. 103/2006/ND-CP”) and specific provisions of this Point.”.

b) To amend and supplement Point 1.4 as follows:

“1.4 Industrial property rights to international trademarks registered under the Madrid Agreement and the Madrid Protocol (hereinafter referred to as “the internationally registered trademarks”) shall be established under decisions on acceptance for protection of registered international trademarks issued by the National Office of Intellectual Property (NOIP) together with a copy of the Trademark Gazette of the trademarks published by WIPO International Bureau, or Certificates of International trademark registrations issued by NOIP upon the request of trademark owners. These decisions and certificates are as valid as protection titles granted to persons registering trademarks in Viet Nam.”.

2. To amend and supplement Point 2 as follows:

“2. Owners of industrial property applications

2.1 Owners of industrial property applications (hereinafter referred to as “application owners”) are organizations or individuals who file applications for registration of inventions, layout designs, industrial designs, trademarks or geographical indications. As soon as the protection titles for inventions, layout designs, industrial designs or trademarks are granted, the application owners are recognized as protection title holders. As soon as the protection titles for geographical indications are granted, the application owners are recognized as the geographical indication registrants.

2.2 Application owners must satisfy the criteria for the right to industrial property registration as provided for in Articles 86, 87 and 88 of the Intellectual Property Law and Articles 7, 8 and 9 of Decree No. 103/2006/NĐ-CP. If they fail to meet these criteria, the industrial property registration shall be considered invalid.”.

3. To supplement Point 3.4 as follows:

“3.4 It shall be considered as invalid if the authorization is made to organizations or individuals who are not entitled to represent or to various organizations and individuals at the same time, including organizations or individuals not entitled to represent.”.

4. To amend and supplement Point 4 as follows:

“4. Authorized representation in carrying out industrial property registration procedures

4.1 The authorized representation and the carrying out the procedures for industrial property registration by authorized representatives (hereinafter referred to as “authorization”) must follow the provisions on authorization in Part III of the Civil Code and the provisions of this Circular.

Application owners may change their authorized representatives (the change of authorization). The change of authorization terminates the authorized relations between the authorizers and the authorized representatives, and this termination shall be made in a writing by the authorizers.

An authorized representative may sub-authorize to other parties, as long as they get the written consent of the authorizer. The sub-authorization arise the sub-authorized relations between the authorized representative and third parties that co-exists with authorized relations between the authorizers and the authorized representatives.

The re-authorization may be made multiply, provided that both of authorized and re-authorized parties must be legal organizations and agents.

4.2 The authorization shall be established in writing (the power of attorney or contract of authorization) with the following principal contents:

- a) Names (full names) and full addresses of the authorizer and the authorized party;
- b) Name (full name) and full address of the party undertaking to act as a surrogate authorization or sub-authorized parties (if any);

- c) Scope of authorization and authorized volume of works;
- d) Authorization duration (a power of attorney without a specified time-limit shall only cease to be valid when the authorizer declares the termination of its authorization);
- dd) Signing date of the power of attorney;
- e) Signature(s), full names, titles and seals (if any) of a lawful representative of the authorizer and the party undertaking to act as a surrogate authorization or sub-authorized party (in case of surrogate authorization or sub-authorization).

4.3 The date on which the power of attorney takes legal effect in communication with NOIP is determined as:

- a) The date on which NOIP receives the valid power of attorney;
- b) The date on which NOIP receives the valid surrogate authorization or sub-authorization;
- c) The date on which NOIP receives a request for changes of the authorization scope, early termination of authorization, change of the address of the authorized party.
- d) The power of attorney may be filed later than filing date of an application, but not exceed one month as of the filing date; except for complaints, the said time-limit shall be 10 working days.

Before the date on which the application is validly accepted, NOIP shall communicate with the person claiming to be the representative of the applicant (as referred to in the request) in order to carry out the formal examination to conclusion whether or not the application is valid, including the legitimacy of the representative.

4.4 Any communication made by authorized parties under the authorized scope and duration shall be understood as on behalf of the application owners, arising rights and obligations of application owners. In case of substitution of authorization or re-authorization, the substitute party or its re-authorized representative shall continue the representation with all matters arising from the authorization made in the previous communications with NOIP.

NOIP shall, at any time during the processing of handling applications, only communicate with the latest authorized party or the latest re-authorized party for each particular work or procedure, if the applicants authorize two or more representatives to perform different tasks or different stages.

4.5 If the scope of authorization stated in the power of attorney covers several independent procedures and the original power of attorney has been submitted to NOIP, the authorized party, when pursuing subsequent procedures, submit a copy of the power of attorney, indicating the application serial number containing the original power of attorney.”.

5. To amend and supplement Point 5.1 as follows:

“5.1 Application owners and their representatives shall ensure the faith of information and documents submitted to NOIP in the course of industrial property registration according to the following regulations:

- a) All documents must be certified by the application owners or their representatives with their signatures and seals (if any). If the certification of a notary public or competent agency (ies) is required by laws, such certification must be made accordingly;
- b) All Vietnamese translations from foreign languages must be guaranteed by application owners or their representatives that the translations are made from the original documents.
- c) If application owners are represented by industrial property representative organizations, the representative persons of of such organization who sign on communication documents must be legal industrial property agents.”.

6. To amend and supplement Point 6 as follows:

“6. Handling the opinion of the third party before issuing decisions on the grant of protection titles

6.1 As of the date on which industrial property applications are published on the Industrial Property Official Gazette to the date prior to issuance of decisions on granting protection titles, any organization or individual may submit to NOIP their written opinion on matters of rights of registration, priority rights, protection criteria and others that relate to the industrial property applications pursuant to the provisions of Article 112 of the Intellectual Property Law. Opponents of granting protection titles must pay charges for handling their oppositions to registration of industrial property as provided. The written opinion of third parties must be regarded as a source for reference in the course of processing industrial property applications.

6.2 When the opinion of the third party is considered as grounded, NOIP shall notify such opinion to applicants and set a time limit of one month from the notification date for them to respond in writing. After receiving the applicant’s

response, NOIP shall notify it to the third party, if necessary and set a time limit of one month from the notification date for them to have opinion in writing on that response. After those provided time limit, NOIP shall handle opinions of the applicant and the third parties based on proofs, arguments furnished, and documents in the applications. The third party shall be notified of the result of substantive examination of those applications.

6.3 When the opinion of the third party is considered groundless, NOIP is not required to notify that opinion to the applicants but shall notify the third party of its refusal to consider his opinion, with clear reasons.

6.4 If the opinion of the third party is related to the rights of registration, when finding it impossible to determine whether or not such opinion are grounded, NOIP shall notify such to the third party so that the latter may file a petition with a court following the provisions of civil procedures. Within one month as of the date NOIP issues the notice, if the third party fails to submit to NOIP a copy of the notification of admitting the case by the court, the opinion of the third party is considered as withdrawn and NOIP continues process the application without opinion of the third party. If NOIP receives a copy of the notification of admitting the case by the court from the third party within the above time limit, it shall suspend the application processing until final results of dispute settlement by the court are obtained. After the final results of dispute settlement by the court are obtained, the application processing shall be resumed in accordance with those results.

6.5 When necessary and upon the request of both parties, NOIP shall organize hearings between the third party and the applicant to further clarify matters challenged by opponents.

6.6 The time-limit for the applicant to respond to oppositions submitted by the third party shall not be counted into the time-limit for NOIP to carry out relevant procedures according to regulations.”.

7. To amend and supplement Point 7 as follows:

a) To amend and supplement Point 7.1.a (ii) as follows

“(ii) Documents, specimens and information disclosing the industrial property subject matters sought to be registered;

Particularly: For an invention application, a description of an invention; for an industrial design application, a set of photos or drawings and a description of the industrial design; for a trademark application, the trademark specimen and list of

goods and services bearing the trademark (must be attached to the request); for a geographical indication application, the name of product bearing the geographical indication (must be attached to the request) and the description of distinctive characteristics and quality of products bearing the geographical indication and a map of the geographical area subject to the geographical indication;”.

b) To amend and supplement Point 7.1.b (iv) as follows

“(iv) A written paper of the People's Committee of Provinces on centrally run cities permitting the use of a place name or other signs indicating the geographical origin of local specialties for registration of trademark under the provisions of Point 37.7.a of this Circular (if the registering trademark is a collective trademark, or a certification trademark that contains a place name or other indication of the geographical origin of the local specialty).”.

c) To amend and supplement Point 7.2.b (iii) as follows:

“(iii) All documents in applications must be presented vertically (only drawings, diagrams and tables may be presented horizontally) on one side of A4 size paper (210 mm x 297 mm), the geographic map can be printed on A3 size paper (420 mm x 297 mm), with margins of 20 mm each, at least font size at least 13, except for supporting documents those is not intended to be used for applications initially;”.

d) To amend and supplement Point 7.2.b (vii) as follows:

“(vii) Terms used in applications must be consistent and common (other than dialects, uncommon words, coined words). Symbols, measurement units, electronic fonts and spelling rules used in applications must be compliant with Vietnamese standards;”.

đ) To amend and supplement Point 7.2.d as follows:

“(d) The request and other documents of applications must contain adequate required and consistent information; the Vietnamese translations of the applications' documents must be true to the original documents; the power of attorney must cover the contents as specified in Point 4.2 of this Circular.”.

e) To amend and supplement Point 7.2.e as follows:

“(e) The subject matters contained in applications must be strictly classified according to the international classification as prescribed at Points 23.5, 33.4 and 37.4.e of this Circular. If applicants do not classify by themselves or classify it incorrectly, NOIP shall do so and applicants shall pay fees for that as

regulated.”.

g) To amend and supplement Point 7.3.c as follows:

“c) Documents evidencing the grounds for enjoying the priority rights: Certification by the receiving office of copies of the initial application(s), except international patent applications filed under the Patent Cooperation Treaty - PCT; list of goods and services in initial trademark applications; document of transfer of the priority rights, if applicants enjoy that rights from other persons).”.

8. To amend and supplement Point 8 as follows:

“8. Industrial property registration fees and charges

8.1 Applicants and persons used industrial property services shall pay fees/charges according to the Ministry of Finance’s regulations and other service charges as provided for.

8.2 Collection of fees and charges

a) When receiving applications or requests for any procedures subject to fees, charges, NOIP shall ask applicants for paying those fees and charges as prescribed (by issuing invoices).

b) When collecting fees and charges, NOIP shall issue 02 original fees, charges receipts as the evidences of fees and charges payment, clearly indicating the fee or charge amounts which have been paid, of which one shall be returned to applicants, one shall be attached to the application for formality examination, and provide applicants with bill as regulated by the Ministry of Finance.

c) Where the payments of fees, charges is made through the postal service or directly transferred to NOIP’s bank account, applicants shall submit a copy of the charge/fee receipts together with applications or the submitted documents.

d) If fees, charges are not yet fully paid according to regulations, NOIP shall issue a notice to applicants.

8.3 Refund of paid fees and charges

a) Except provided for in Point 8.3.b below, paid fees and charges for each procedures in the course of processing applications shall not be refunded if the timing for those procedures have been started. Filing fees shall not be refunded.

(b) The paid fees and charges shall only be refunded upon requests of applicants if NOIP has not collected in accordance with regulated provisions (wrong collection, over collection, ect.),

c) In case of acceptance of requests for fee and charge refund, NOIP shall issue refund notices to applicants, clearly stating the refunded amounts and the method of refund.

c) In case of rejection of requests for fee and charge refund, NOIP shall notify such to applicants, clearly stating the reasons for rejection.”.

9. To amend and supplement Point 9 as follows:

“9. Time limits

9.1 Time limits specified in the Intellectual Property Law, Decree No. 103/2006/NĐ-CP and this Circular shall be counted according to the provisions of the Civil Code.

9.2 Time limits for applicants and related parties to submit, modify or supplement documents or give their opinions may be extended once for a period of time equal to the time limit set in the notification made by NOIP, provided that they must submit a written request for extension before the expiry date of the set time limits and pay prescribed fees, charges.

9.3 If the set time limits are expired (including the extended period as referred to in this Point), applicants fail to submit, modify or supplement documents or give their opinions, NOIP shall grant decisions on refusal to related procedures, respectively, and applicants have no rights to submit, modify or supplement documents or give their oppinions, except cases provided for in Point 9.4 below.

9.4 The time limits shall be exclusive of the duration of force majeure events or objective obstacles by which organizations or individuals fail to perform their rights and obligations within the provided time limits if they make requests and have sufficient evidences to prove those circumstances. If the requests are accepted, NOIP shall issue decisions or notices on withdrawing the decisions or notifications which have been issued on the grounds that those organizations or individuals fail to exercise its rights and obligations within the time limits and to restore the application process to the status before expiry of the time limit.

9.5 Force Majeure is an unforeseeable event (such as natural disasters, war, etc.) and cannot be overcome despite applicants have taken necessary measures in their capacities.

Objective obstacles are obstacles caused by objective circumstances (e.g. sickness, business trips, ect.) that make persons having rights and obligations impossible to know about their legitimate rights or interests are being infringed upon, or are unable to exercise their rights and obligations.

9.6 Applicants may request NOIP to carry out procedures before the set time limits in writing and shall pay prescribed service charges if accepted. If not accepting requests, NOIP shall notify applicants and clearly state the reasons.”.

10. To amend and supplement Point 11 as follows:

“11. General procedures

All types of industrial property applications shall be processed by NOIP in the following order: receipt of applications; formal examination; publication of valid applications; substantive examination (except for layout design that are not subject to substantive examination); grant or refusal to grant protection titles; registration and publication of decisions on granting protection titles. For international trademark applications designating Viet Nam, the processing procedures shall be specified at the Point 41.6 of this Circular.”.

11. To amend and supplement Point 12.1 as follows:

12.1 Applications may be filed with NOIP or to receiving offices established by NOIP. Applications may also be sent by post to the mentioned-above receiving offices. Filed applications and documents shall not be returned (except the originals which are used to verify their copies).”.

12. To amend and supplement Point 13 as follows:

a) To amend and supplement Point 13.2.b as follows:

“b) The request contains insufficient information of the author (for invention, industrial design or layout design registration applications), applicants, their representative; lack of the signature and/or seal (if any) of applicants or their representative;”

b) To supplement Point 13.2.h as follows:

“h) An application filed in contravention of the provisions on security control of an invention before filing to abroad under Clause 2, Article 23b of Decree No. 103/2006/ND-CP, even it is filed directly to the International Bureau.”.

c) To amend and supplement Point 13.3 as follows:

“13.3 Errors in the application at the stage of formality examination

An application shall be considered as erroneous in the followings:

a) An application fails to satisfy formality requirements as specified at Point 7.2 of this Circular (insufficient numbers of copies of any required documents; failing to satisfy the uniformity requirement; failing to satisfy the format requirements; failing to indicate the type of trademark sought to be registered,

lacking of the trademark description; lacking of classification of inventions, industrial designs, goods/services bearing trademarks, or inaccurate classification; lacking of translations of documents proving priority rights, when necessary; information of the applicant in documents is inconsistent or erased or improperly certified);

b) Fees, charges for filing, publication, examination, searching for examination have not yet been fully paid, except for substantive examination charges in case there is no request for substantive examination;

c) There is no power of attorney or the power of attorney is invalid (if applications are filed through representatives).

d) To amend and supplement Point 13.5.c as follows:

“c) The determination of the priority dates according to claims for priority rights based on initial application(s) filed in Viet Nam shall be followed the principles as specified in Article 91 of the Intellectual Property Law and provisions of Points b, c and e, Clause 1, Article 10 of Decree No. 103/2006/NĐ-CP.”.

đ) To amend and supplement Point 13.6 as follows:

“13.6 Notifications of results of formality examination, decisions on acceptance of the valid applications

a) If applications fall into one of the cases specified at Point 13.2 of this Circular or containing errors specified at Point 13.3 of this Circular, NOIP shall communicate applicants the results of formality examination, indicating its intended rejection of applications due to such errors. Those notices must clearly indicate the name and address of applicants; names of the industrial property representative organizations (if applications are filed through that organizations); names of the subject matters contained in applications; filing dates and the serial numbers of applications; errors and reasons for which applications are rejected, and set a time limit of two months from the notice date for applicants to have opinions or correct errors.

With regard to documents evidencing grounds for the priority rights, applicants are permitted to submit those documents in a time limit of three months from the filing dates of applications.

b) For valid applications, NOIP issues decisions on acceptance of valid applications, clearly stating the names and addresses of the applicants, the names of the authorized representatives (if any) and information on the subject matter contained in the applications, the filing dates and the priority dates, and

communicate to the applicants. In case a claim for priority right is not accepted, the application is still validly accepted except the application contains other errors affecting its validity and the reason for non-acceptance of the priority right must be clearly stated in the decision.”.

e) To amend and supplement Point 13.7 as follows:

“13.7 Rejection of applications

If applicants who have been sent notices by NOIP of results of formality examination with its intended rejection of the applications due to errors specified in Point 13.6.a of this Circular fails to correct errors or unsatisfactorily corrects errors or makes no opposition or makes unreasonable oppositions to the intended rejection within the set time limits, NOIP shall issue decisions on rejection of the applications and send it to the applicants.”.

13. To amend and supplement Point 14 as follows:

a) To amend and supplement Point 14.1 as follows:

“14.1 All information regarding validly accepted applications shall be published by NOIP in the Industrial Property Official Gazette. Applicants shall pay fees or charges for such publication.”.

b) To amend and supplement Point 14.3 as follows:

“14.3 Contents of publication of applications

a) Information related to valid accepted applications, including divisional applications which is published in the Industrial Property Official Gazette, shall include: Information related to valid formality of applications as stated in decisions on acceptance of valid applications; full names and nationality of inventors, authors of industrial designs and integrated circuits; information related to the valid applications (transfer of applications, division of applications, serial numbers of parent applications, etc.); invention abstracts accompanied with drawings (if any); sets of photos or drawings of industrial designs; specimens of trademarks and lists of goods and services; summaries of particular characteristics and names of products bearing geographical indications.

b) Amendments, supplements and changes related to the information mentioned at Point a above shall also be published in the Industrial Property Official Gazette.”.

c) To amend and supplement Point 14.4 as follows:

14.4 Access to published information on valid applications

Anyone may access detailed information on the nature of subject matters contained in applications published in the Industrial Property Official Gazette or request NOIP to supply such information, subject to payments for such supplied information according to regulations.”.

14. To amend and supplement Point 15 as follows:

a) To amend and supplement Point 15.2.a as follows:

“15.2 Reference of prior search results

a) In the course of substantive examination of invention/industrial design applications having claims for priority rights, NOIP may use the results of information search and refer to examination results of those applications filed overseas.”.

b) To amend and supplement Point 15.3 as follows:

“15.3 Correction of errors, explanation of the contents of applications, supply of information.

a) Where an application is erroneous or not adequately disclosed the nature of the subject matter, NOIP sends the applicant a notices, clearly indicating the errors or requests the applicant for further justifying the contents of the application, supplying information in order to fully disclose of the nature of subject matter contained in the application and set a time limit of three months as of the notification date for applicants to correct errors or deficiencies.

b) All amendments or supplements to erroneous documents of applications shall be made by applicants themselves. NOIP only makes those amendments or supplements when requested by applicants in writing. Applicants shall pay prescribed fees/charges for the examination of those amendments and supplementations. A request for amendment or supplementation of the application shall be enclosed with relevant documents of applications and regarded as official documents of applications.”.

c) To amend and supplement Point 15.7 as follows:

“15.7 Works to complete the substantive examination

a) Notification of results of substantive examination

On the date of expiry of the time limit for substantive examination of the application specified at Point 15.8 of this Circular at the latest, NOIP shall send to the applicant one of the following notices:

(i) If the subject matter contained in an application fails to satisfy the protection conditions, NOIP shall issue a notice on the results of substantive examination, indicating its intended refusal to grant a protection title, the reason(s) for refusal, possibly guiding the change of the protection scope (volume) and setting a time limit of three months from the notice date for the applicant to give opinion;

(ii) If the subject matter contained in an application satisfies the protection conditions but still contains errors, NOIP shall issue a notice on the results of substantive examination, clearly indicating its intended refusal to grant a protection title, errors in the application and setting a time limit of three months from the notice date for the applicant to justify or correct errors;

(iii) If the subject matter contained in an application satisfies the protection conditions or the applicant satisfactorily corrects errors or makes reasonable justifications within the time limit specified at Points 15.7.a (i) and (ii) above, NOIP shall issue a notice on the results of substantive examination, in which:

- If applications fall into the cases specified at Point 15.6.d of this Circular: Indicating its intended grant of the protection title and setting a time limit of three month from the notice date for the applicant to pay fees for granting protection title, fees for publication of decisions of granting the protection title, fees for registration and the maintenance fees and fees for use of the protection title for the first years validity of the invention patent;

- In case trademarks contains elements which must be excluded from protection: Indicating intended refusal of granting the protection title, concurrently stating the intentions and reasons for non-protection of such elements and setting a time limit of three months from the notice date for the applicant to have his opinion.

- If applications do not fall into the cases prescribed at Point 15.6.d of this Circular: Stating the further handling of applications in compliance with the provisions of Point 15.6.e of this Circular.

b) Upon the expiry of the time limit specified at Points 1 5.7.a (i) and (ii) above, if the applicant fails to correct errors or unsatisfactorily corrects errors, makes no opposition or an unreasonable opposition, within 15 days after the expiry of the above time limit, NOIP shall issue the decision on refusal to grant the protection title.

If the applicant finds out or provides new facts (which have not been considered in the examination process) that may affect the examination results, NOIP shall,

at the request of the applicant, consider the revocation of the decision on refusal to grant the protection title and restore the examination process.

c) If the applicant fails to pay fees for granting the protection title, fees for publication of the decision on granting the protection title, fees for registration of decision for granting the protection title within the time limit specified at Point 15.7.a (iii), within 15 working days after the expiry of the corresponding time limit, NOIP shall issue decision on refusal for granting the protection title. For an invention application particularly, if within the time limit prescribed at Point 15.7.a (iii) above, the applicant has fully paid fees for granting the protection title, fees for publication the decision to grant the protection title, fees for registration of decision on granting a protection title, but fails to pay the maintenance fee and fees for the use of protection title for the first year of invention or utility solution patents, such protection title shall be granted, but be terminated its validity immediately upon issuance.”.

d) To amend and supplement Point 15.8.b as follows:

b) If NOIP issues notices under Point 15.7.a (i) and (ii) of this Circular, the time limit for the applicant responding the notice shall not be counted into the time limit for the substantive examination. This interval time is understood as:

(i) The period from the notice date to the date on which the applicant responds to the notice; or

(ii) The time limit set out in the notice (including extension as prescribed), if the applicant fails to respond to the notice.

15. To amend and supplement Point 16 as follows:

“16. Re-examination of applications

16.1 Re-examination of an application challenged by an opposition after the issuance of a notice on intended grant/intended refusal to grant the protection title.

a) The re-examination of an application according to the provisions of Clause 4, Article 117 of the Intellectual Property Law shall be carried out in the cases provided for in subparagraph (i) and shall meet the conditions set out in subparagraph (ii) and subparagraph (iii) below:

(i) A written opinion is submitted by the applicant to NOIP during the period from the notice date on intended grant/intended refusal to grant the protection title to the date prior to the issuance of a decision on grant/an official notice on refusal to grant the relevant protection title; or have a written opinion from a

third party opposing the intention to grant the protection title together with the plausible reasons for having been unable to make opposition earlier;

(ii) Opinion mentioned at Point 16.1.a(i) above are well-grounded and supported by proofs or references to reliable information sources;

(iii) Arguments, evidences to proving opinions mentioned at Point 16.1.a (i) above must be different from those previously furnished (if any), or those arguments and evidences is not different but not yet answered by NOIP according to the provisions of Point 6.2 of this Circular.

b) The time limit for re-examination of an application is defined in Clause 3, Article 119 of the Intellectual Property Law as follows:

(i) For inventions, not exceeding 12 months;

(ii) For trademarks, not exceeding 6 months;

(iii) For industrial designs, not exceeding 4 months and 20 days;

(iv) For geographical indications, not exceeding 4 months.

For complicated cases involving many details that need to be verified or need expert opinions, the time limit for re-examination may be prolonged, but must not exceed the time limit for the first examination as provided for in Clause 2 Article 119 of the Law on Intellectual Property.

c) Contents and procedures for re-examination shall comply with provisions of Points 15.6 and 15.7 of this Circular.

d) The re-examination of the application shall be made only once for the applicant and for each third person.

16.2 The re-examination of an application upon the request of the protection title holder for narrowing of the protection scope.

If the protection title holder requests for narrowing of the scope of the industrial property rights protection according to the provisions of Clause 3, Article 97 of the Intellectual Property Law, NOIP shall re-examine that application according to the contents and procedures specified at Points 15.6 and 15.7 of this Circular, as provided that the requester pays the prescribed fees, charges for examination of requests for narrowing of the protection scope and other fees, charges as prescribed.”.

16. To amend and supplement Point 17 as follows:

“17. Amendment/supplementation/division/conversion/transfer/ownership change/withdrawal of applications

17.1 Amendment and supplementation of applications

a) Before NOIP issues the decision on refusal to grant the protection title or a decision on the grant of the protection title, the applicant may amend or supplement documents of the application on his/her own initiative or upon the request of NOIP.

The applicant for amendment of or supplement to an application shall have to pay fees for amendment of or supplement to the application as prescribed, except for cases specified at Point h below. Where the amendment or supplementation subject to publication according to the provisions at Point 14.3.b of this Circular, the applicant shall have to pay fees for publication of those amendment of or supplement to the application as prescribed. If request for correction of errors due to the fault of NOIP, the applicant shall not pay the above fees.

b) For the request for amendment or supplementation of the following documents, the applicant shall submit amended or supplemented versions of those documents enclosed with a detailed written explanation of the contents amended or added in comparison to the initially submitted documents:

(i) Description, abstract for the invention application;

(ii) A set of 04 photos or drawings, description of integrated circuit, for the integrated circuit application;

(iii) A set of 04 photos or 04 drawings, description of design, for the industrial design;

(iv) A set of 05 trademark specimen, list of goods and services bearing the trademark, for a trademark application;

(v) Description of distinctive characteristics, quality and reputation of products, the map of the geographical area corresponding to the geographical indication, for a geographical indication application.

c) The amendment and supplementation of an application must not expand the protection scope (volume) beyond the contents which have been disclosed in the description of invention applications, the set of photos/drawings and description for industrial design applications, in the specimen and list of goods and services for trademark applications, and must not change the nature of the subject matter contained in the application. If the amendment expands the protection scope (volume) or changes the nature of the subject matter sought to the protection, it shall not be accepted, the applicant shall file a new application and all related procedures are restarted from the beginning.

d) The applicant may request correction of errors in the names, addresses of the applicant, and names and nationality of inventors and authors of integrated

circuits and industrial designs.

d) All requests for amendment and supplementation must be made in writing according to Form 01-SDD attached to the Appendix B of this Circular. A request may be made for amendment of the same contents relating to many applications, provided that the requester pays the fees for examination of amended contents in those applications.

e) If the applicant amends or supplements the documents contained in applications on his/her own initiative after NOIP issues the decision on acceptance of valid application, the amendments or supplements shall be made according to the provisions of Points 13.2, 13.3 and 13.6 of this Circular. Amended and supplemented contents shall be published in the Industrial Property Official Gazette according to the provisions of Point 14 of this Circular and applicant shall pay fees for such publication as prescribed.

g) A request for amendment of an application filed after NOIP notifies its intention to grant the protection title in following cases, the application shall be re-examined:

(i) Amendment of the information relating to the nature of the subject matter contained in the application: Description of the invention; description, set of photos/drawings of the industrial design; trademark specimen and lists of goods/services bearing the trademark, regulations on the use of collective trademarks, regulations on the use of certification trademarks; description of the distinctive characteristics, quality and reputation of the product bearing the geographical indication or geographical area corresponding to the geographical indication;

(ii) Change of trademark owner.

h) The amendment, supplementation of an application, including change of the authorized party, which is made by the applicant on his/her own initiative or at the request of NOIP, must be made in writing, clearly specifying the amended and supplemented contents, and enclosed with the fee receipt for such an amendment and supplementation. Documents containing amendments and supplements to applications must comply with the relevant provisions of Points 7, 10 and 13 of this Circular.

17.2 Division of applications

a) Before NOIP issues a decision refusing to accept the application, the decision on grant or refusal to grant the protection title, the applicant may divide, on his/her own initiative or upon the request of NOIP, his/her application (division of one or several technical solutions from an invention application, one or several industrial designs from an industrial design application, one or several

components of a trademark or part of the list of goods and services in a trademark application to one or several new applications, referred to as divisional applications).

b) A divisional application must be given a new serial number and enjoys the filing date or priority date(s) of the parent application (if any), and shall be published according to the provisions of Point 14 of this Circular after the issuance of the decision on acceptance of valid application.

c) For each divisional application, the applicant shall pay a filing fee and other fees/charges for procedures carried out independently from the parent application (in addition to the procedures that have been conducted in the original application without having to re-do in the divisional application), but is exempted from fees for claims for priority rights (except for case of divisional of the industrial design application due to lack of uniformity). Divisional applications are subject to formality examination and shall be further processed according to the provided procedures that have not yet completed in their parent applications. Divisional applications shall be re-published and applicants shall pay a publication fee if the division is made after NOIP issues decision on acceptance of valid applications for parent applications.

d) Parent application (after being divided) shall continue to be processed in accordance with the amendment procedures. After carrying out procedures for amending the patent application, NOIP shall issue a notice accepting the amendment of the application, then publish the amended contents if the parent application has been accepted as the valid application by a NOIP's decision and the applicant must pay fees for examination of the application's amendment.

17.3 Conversion of applications

a) Before NOIP issues a decision on its refusal to acceptance of valid application, decision on grant or refusal to grant a protection title, a applicant may convert his application for an invention patent into a utility solution patent or vice versa according to the provisions of Point đ, Clause 1, Article 115 of the Intellectual Property Law, provided that the applicant pays a prescribed fees for application conversion.

b) After receiving the valid request for application conversion, NOIP shall continue carrying out the procedures for processing the converted application according to relevant provisions, but shall not carry out again the procedures already completed for the application before the conversion request is made.

17.4 Request for recording the change of owner

a) Before NOIP issues a decision on refusal to acceptance of valid application, decision on grant or refusal to grant a protection title, the applicant may request

NOIP for recording the change of the applicant owner based on an application transfer, inheritance, succession or decision of a competent agency.

b) Transfer of applications

(i) Documents for transfer of industrial property applications (originals or copies certified by the public notary or a competent agency) must contain the following principal contents:

- Name and address of the transferor and the transferee;
- The serial number of the transferred application or information sufficient to identify the application;

(ii) The request for recording the application transfer shall be made according to Form 02-CGD as stipulated in Annex B of this Circular. The applicant may make one transfer request for multiple applications of the same applicant, provided that fees for examination of the application transfer shall be made in accordance with the corresponding number of applications;

(iii) If a request for the transfer of a trademark application is filed after a notice of intended to grant a protection by NOIP, the trademark application shall be re-examined and published transferred contents. The applicant shall pay fees for examination and publication of application as prescribed.

c) Change of the owner due to inheritance, succession or decision of the competent authority

(i) The applicant may request the change of the owner of industrial property applications on the basis of inheritance, succession or inheritance of the assets upon consolidation, merger, division, separation of legal persons, joint ventures or associates or establishment of a new legal entity of the same owner, change of business mode or under the decision of a court or other competent authority;

(ii) The procedures provided for at Point 17.4.c (i) above shall be carried out in line with the procedures for application amendment as provided for at Point 17.1 of this Circular.

17.5 Withdrawal of application

a) The withdrawal of the application must be made by the applicant or by his representative who is authorized in writing. For an application filed through a representative, the power of attorney must specify the authorization of withdrawing the application or is enclosed by a letter indicating the serial number of the application to be withdrawn.

b) Within two months after receiving the request, NOIP shall:

(i) Issue a notice of withdrawal in the case of the request for withdrawal meeting

requirements of clause 17.5(a) of this Circular, terminate the processing of the application and record the withdrawal of the application. The withdrawn industrial property application cannot be restored, but may be used as a basis for requesting the priority right as stipulated in Clause 3, Article 116 of the Intellectual Property Law; or

(ii) Issue a notice of refusal to accept the withdrawal as a result of a withdrawal request that does not meet the requirements of clause 17.5 (a) above.

17. To amend and supplement Point 18 as follows:

a) To amend and supplement Point 18.2.a as follows:

“a) Within 15 days after applicants pay fully and on time the prescribed fees and charges, NOIP shall carry out the procedures for granting protection titles according to the provisions of Article 118 of the Intellectual Property Law.’.

b) To amend and supplement Point 18.3 as follows:

“18.3 Grant of protection title duplicates and re-grant of protection titles/
protection title duplicates

a) Where the industrial property rights are under co-ownership, the protection title is only granted to the first person mentioned to in the list of co-applicants. Other co-holders may request NOIP to issue duplicates of the protection title but shall pay a fee therefor.

b) Where protection titles/duplicates of protection titles are lost or damaged, torn, stained or faded so that it can not be used, loosed so that it can not be sealed, the owners of industrial property rights who has been granted the protection title/ duplicates of the protection title may request NOIP to re-issue the protection title/duplicates of the protection title, subject to the payment of a duplicate charges.

c) Request for the duplicate of a protection title, the re-issuance of a protection title/duplicates of a protection title

The request for the duplicate of a protection title, the re-issuance of the protection title or duplicate of the protection title must be made in writing, unless it is made in the request for registration of the industrial property’s subject matter. The dossier must consist of one set of the following documents:

(i) Request for the duplicate of a protection title, the re-issuance of the protection title shall be made according to Form No. 03-PBVB/GCN in Appendix C to this Circular.

(ii) 02 trademark specimens, 02 sets of photos or drawings of the industrial design which is identical with the trademark specimen, a set of photos or

drawings of the industrial design in the original protection title;

(iii) Power of Attorney (if the request is filed through a representative);

(iv) Copies of payment receipt of fees/charges (if the payment is made via postal services or transfer to NOIP's bank account).

d) Handling of requests for grant of the duplicate or renewal of a protection title

(i) Within one month after receiving the requests, NOIP shall examine the request for granting the duplicate of a protection title, re-granting the protection title/duplicate of a protection title. If that request meets the above requirements, NOIP shall issue a decision on for granting the duplicate of the protection title or re-granting the protection title/duplicate of the protection title and record it in the respective sections in the National Register of Industrial Property;

(ii) The duplicate of the protection title must contain all information of the original protection title, with the indication of “duplicated version”. The re-granted protection title/duplicate of the protection title must contain all information of their original ones, with the indication of “re-granted version”;

(iii) If the request for granting the duplicate of the protection title or re-granting the protection title/duplicate of the protection title fails to meet the requirements specified at Point 18.3.c above, NOIP shall issue a notice and set a time limit of 02 months from the date of the notice for correction and opinion by requester. If at the expiry of the above time limit, the requester fails to correct the errors or correct the errors unsatisfactory or has no opposition or has opposition of NOIP’s notice, but unjustified, NOIP shall issue a decision the refusal to grant the duplicate of the protection title or re-granting the protection title/duplicate of a protection title, clearly stating the reasons.”.

18. To amend and supplement Point 19 as follows:

a) To amend and supplement Point 19.1.b as follows:

“b) The National Registers specified at Point 19.1.a (i), (ii), (iii), (iv), (v) and (vi) above contains respective sections of each types of industrial property protection title, and each section must consist of:

(i) Information of the protection title: serial number, granting date; title the protected subject matter, scope/volume of protection and duration of validity; name and address of the protection title holder/the registrant of the geographical indication, name and address of the author of the invention, layout design or industrial design;

(ii) Information on the application filed for the protection title (serial number, filing date, priority date, name of the industrial property representatives, if any);

(iii) All information on the amendment of the protection title, the validity status of the protection title (maintenance, renewal, termination and invalidation of validity); transfer of ownership and rights to use of industrial property subject matters; serial number, granting date and changes of industrial property representatives, if any.”.

b) To amend and supplement Point 19.1.d (iii) as follows:

“(iii) Information on changes of the list of industrial property representatives (new grant, re-grant, withdrawal of certificates of industrial property representative practices, etc.).”.

c) To amend and supplement Point 19.1.e as follows:

“e) The National Registers shall be established by NOIP and archived in the printed, electronic or other forms. Any person may do searching on the electronic National Registers, if any or request NOIP to issue copies or extracts from the National Registers, and shall pay a fee for those copy copies or extracts.”.

d) To amend and supplement Point 19.2 as follows:

“a) All decisions on granting protection titles, decisions on protection of international trademark applications shall be published by NOIP in the Industrial Property Official Gazette within two months from the date of decisions, after applicants pay the prescribed fees for publication.

b) Information published according to the provisions of Point 19.2.a above includes those written in the decisions, such as: abstract of invention; set of photos or drawings of industrial design; specimens and list of goods and services bearing the trademark; geographical indication and the products bearing the geographical indication.”.

19. To amend and supplement Point 20 as follows:

a) To amend and supplement Point 20.1 as follows:

“20.1 Amendment of information on the protection title and narrowing of the protection scope

a) Request for amendment of information on protection titles, change of holders of protection titles

The owner of the protection title or a person who is authorized by the State to register a geographical indication as stipulated in Article 88 of the Intellectual Property Law may request NOIP to record the change of information on the protection title in the following cases:

(i) Change in the name and address of the protection title holder; name, nationality of the author of the invention, industrial design or layout design;

change of the representative of the protection title owner;

(ii) Change of the protection title holder (transfer of ownership by inheritance, succession, merger, division, splitting, consolidation, joint venture, association, establishment of new legal persons of the same owner, a change of business mode, a decision of a court or competent authority);

(iii) Amendment of the description of the distinctive characteristics, quality and reputation of products bearing the geographical indication, geographical area corresponding to the geographical indication, regulations on the use of collective trademarks, regulations on the use of certification trademarks.

The person requesting for recording the changes of information on the protection title shall pay the examination fees the request for the amendments of protection titles, registration fees and fees for publication of decisions on recording the amendments of protection titles.

The person requesting for recording the change of industrial property representatives shall submit the lawful power of attorney from protection title holders and pay fees for recording the change of the industrial property representatives as prescribed.

b) A request for narrowing of the protection scope

A protection title holder is entitled to file a request NOIP for narrowing of the protection scope according to the provisions of Clause 3, Article 97 of the Intellectual Property Law in the following cases:

(i) Request for amendment of minor details without any substantial change in the trademark specimen contained in the Certificate of trademark registration;

(ii) Request for exclusion of one or several goods or services or groups of goods or services from the list of goods or services specified in the Certificate of trademark registration without any change in the trademark specimen;

(iii) Request for exclusion of one or several independent or dependent claims under in the (requested) protection scope recorded in the invention or utility solution patent;

(iv) Request for exclusion of one or several industrial design variations, one or several products from the set of products contained in the industrial design patents.

Requesters for narrowing the protection scope shall pay an examination fees for narrow of the protection scope, the registration fees and the fees for publication of decisions on amendment of the protection title.

c) Application for the amendment of protection titles

Depending on contents which need to be amended or supplemented as defined at Points 20.1.a, 20.1.b above and Point b, Clause 1, Article 97 of the Intellectual Property Law, a application must comprise a set of the following:

(i) A request for amendment of the protection title made in the form of 01-SDVB in the Annex C of this Circular, clearly stating the request for recordal of change in the name, address of the protection title holders; name and nationality of the author of the protection titles for the invention/utility solution or industrial design; change the representatives of the protection title owners; change the owners of the protection title; request the amendment of the description of the distinctive characteristics, quality and reputation of the products bearing the geographical indication, map of the geographical area corresponding to the geographical indication, regulations on the use of the collective trademarks, regulations on the use the certification trademarks; or narrow of the protection scope.

(iii) Documents certifying the change of the name, address (the originals or copies certified by the public notary or competent agencies); decisions on the change in name, address; business registration certificate that records the change in name, address; other legal documents evidencing for the change in name, address (certified by the public notary or competent agencies) – if the requested amendments relate to the change in name, address;

(iv) Documents evidencing the transfer of ownership according to the provisions at Point 20.1.a (ii) above, if the request for change in the protection title holder (documents evidencing the inheritance, succession, merger, separation, joint venture, association, establishment of new legal entity of the same owner, change in business operation or under decisions of court or competent agencies);

(v) Detailed explanation of amended contents;

(vi) 05 specimens of the amended trademark (if request for amendment of the trademark's details); 05 set of photos or drawings of the industrial design (if the request for amendment of the industrial design); 02 copies of descriptions of the distinctive characteristic, quality and reputation of the product bearing the geographical indication or amended map of the geographical area corresponding to the geographical indication (if request for amendment of the geographical indication); 02 copies of amended regulations on the use of collective trademark or certification trademark (if request for amendment of collective trademark or certification trademark);

(vii) Power of attorney (if the request is made through the representative);

(viii) Copies of receipt of paid fees/charges (in case of payment is made via the postal service or transferred to NOIP's bank account).

A request for the amendment of the protection title may ask for amendment of

several protection titles if the same amendment is made, provided that the applicants shall pay the amendment fees for each protection titles as prescribed.

d) Handling of requests for amendment of protection titles

(i) Within two month after receiving an application, NOIP shall examine the request for the amendment of the protection title as provided for in points 20.1.a (i) and 20.1.a (ii) of this Circular. If the request is valid, NOIP shall issue a decision on amendment of the protection title, register and make it published in the Industrial Property Official Gazette. If the request is error or invalid, the NOIP shall send to the requester a notice informing its intended refusal to accept the amendment, clearly stating the reason for the refusal and setting a time limit of two months as of notice date for correction of errors or for opposition. Within the set time limit, if the requester fails to correct errors or unsatisfactorily corrects errors, makes no opposition or an unreasonable opposition, NOIP shall issue a decision on rejection of the request for the amendment of protection titles.

For requests for amendments of protection titles as prescribed at Point 20.1.a (iii) and Point 20.1.b, the procedures for re-examination of such applications shall be conducted according to the contents and procedures specified at Point 15.6 and Point 15.7 of this Circular. The time limit for re- examination shall not be counted into the time limit for examination of the request for amendments of protection titles.”.

b) To amend and supplement Point 20.2.b as follows:

“b) The protection title holder shall pay fees for examination of the request for amendments of protection titles according to the provisions of Clause 1, Article 97 of the Intellectual Property Law, if the error is caused due to their fault. If the error is caused due to NOIP’s fault, the fees shall not be paid by the protection title holder.”.

20.3 Maintenance of validity of invention protection titles

To have the validity of his/her invention protection title maintained, the protection title holder shall pay a validity maintenance fee within six months before the expiration of the validity term. The payment of the validity maintenance fee may be delayed for no more than six months after the expiration of the current validity term but the protection title holder shall pay the maintenance fee plus 10% for each month of delayed payment.

c) To amend and supplement Point 20.3 as follows:

“20.3 Maintenance of validity of invention/utility solution protection titles

a) To have the validity of his/her invention protection title maintained, the protection title holder shall submit a request made in Form 02-GH/DTVB, a valid

power of attorney (if the request is filed through a representative) and the fees for examination of validity maintenance, fees for validity maintenance and fees for use of the protection title, registration fees and fee for publication of validity maintenance of the protection title within 06 months up to the expiry of the validity term. The procedure for validity maintenance may be conducted later than the said time limit, but not exceed six months from the expiration date, and the protection title holder shall pay an additional amount of 10% of maintenance fees for each belated month.

b) NOIP shall examine the request for validity maintenance within one month from the date of receipt of the request and the fees/charges payment and stipulated in Point 20.3.a above. If the request is valid, NOIP shall record it in the National Register of Inventions, issue a notice on the validity maintenance of the protection title, and publish it in the Industrial Property Gazette.

If the request is error or invalid, NOIP shall issue a notice of that and fix a time limit of two months from the notice date for the requester to correct the errors or make oppositions. If the requester fails to correct the errors or unsatisfactorily correct the errors or make no opposition or make unsatisfactory the oppositions within the said time limit, NOIP issues the decision on refusal of the validity maintain of protection titles.”.

d) To amend and supplement Point 20.4 as follows:

“20.4 Extension of the validity of protection titles

a) The validity of invention patents, utility solution patents and certificates of registered layout designs shall not be extended.

The validity of industrial design patents may be extended twice, for a period of five years each. Where a protected industrial design has several variations, the patent may be extended for all or some of the variations, in which there must be a basic variation.

The validity of a certificate of registered trademark may be extended many times, for a period of ten years each, for all or part of the list of goods and services.

b) To have the validity of industrial design patents or Certificates of trademark registration extended, within 06 months before the expiration date of the validity of the patents or certificates, the patent or certificate holders shall file an application for extension to NOIP and pay fees for examination of application for extension, fees for extension of protection titles, fees for registration and fees for publication of decision on extension of protection titles.

The application for validity extension may be filed latter than the above-mentioned time limit, but not exceed 06 months after the expiration of validity of

the protection titles, and the protection title holder shall pay an extension fee plus 10% for each month of delayed filing.

c) Applications for validity extension

An application for extension of validity of the protection title consists of the following:

- (i) Request for validity extension of the protection title, made in Form 02-GH/DTVB in Annex C of this Circular;
- (ii) Original protection titles (if the extension is requested to be recorded in the protection title);
- (iii) Power of attorney (if the application is filed through a representative);
- (iv) Receipts of the prescribed fees (if payment is made through the postal services or transferred to NOIP's bank account).

d) Handling of applications for validity extension

NOIP shall examine the application for validity extension within one month as of filing date. If the application is valid, NOIP shall issue a decision on the validity extension, recording it in protection titles, registering and publishing it in the Industrial Property Official Gazette within 02 months.

After the procedure for extension has been completed, if the protection title holder requests NOIP to record the decision on the extension of validity in the protection title, the protection title holder shall carry out the procedures for amendment of the protection title and payment of fees, charges as prescribed.

NOIP shall issue a notice on its intended refusal to extend the validity, clearly stating the reason and setting a time limit of two month from the of notice date for the applicant to correct errors or make oppositions if the application for validity extension falls into one of the following cases:

- (i) It is invalid or filed in contravention of the prescribed procedures;
- (ii) The applicant is not the protection title holder.

If within the set time limit, the applicant fails to correct errors or unsatisfactorily corrects errors, makes no opposition or unreasonable oppositions, NOIP shall issue a decision on its refusal to extend the validity.”.

20. To amend and supplement Point 21 as follows:

“21. Termination, invalidation of protection titles

21.1 Requests for termination, invalidation of protection titles

Organizations and individuals requesting for termination or invalidation of protection titles as provided for in Clause 4, Article 95 and Clause 3, Article 96 of

the Intellectual Property Law shall have to pay fees for the request, charges for examination of request for termination or invalidation of protection titles, fees for registration and publication of decision on termination or invalidation of protection titles.

Requests for the termination or invalidation of protection titles shall be handled according to the provisions of Articles 95 and 96 of the Intellectual Property Law and this Point.

For requests for invalidation of protection titles, NOIP shall re-examine the corresponding applications according to the contents á prescribed at Points 15.6 and 15.7 of this Circular.

21.2 Applications for termination or invalidation of protection titles

a) An application may request for termination or invalidation of one or more than one protection titles by invoking the same reasons, provided that the applicant shall pay prescribed fees for each protection title.

b) An application for termination or invalidation of the protection title must comprises the followings:

(i) The request for termination or invalidation of the protection title, made according to 04-CDHB in Annex C of this Circular;

(ii) Proofs (if any);

(iii) Power of attorney (if the request is filed through a representative);

(iv) A written justification of the request (clearly stating the serial number of the protection title, reasons, legal grounds, contents requested for termination or invalidation of a part of or entire the protection title) and relevant documents as specified at Points 7.2, 22.2 and 22.3 of this Circular;

(v) Receipts of the prescribed fees and charges (except the fees is paid through postal services or transfer to NOIP's bank account).

21.3 Handling of requests for termination or invalidation of protection titles

a) If a request for termination or invalidation of the protection title is made by a third party, NOIP shall notify in writing the third party's opinion to the protection title holder within one month as of date of receiving the request, and setting a time limit of two months from the notice date for the protection title holder to respond. NOIP may hold a face-to-face meeting between the third party and the protection title holder for their view exchange.

b) Have considered the opinions of the parties, NOIP shall issue the decision on termination or invalidation of part of or the entire protection title or notify its refusal to terminate or invalidate the protection title according to the provisions of

Clause 4, Article 95 and Clause 4, Article 96 of the Intellectual Property Law.

The time limit for issuing decisions and notices provided for at this Point is 03 months from the expiry of the two-month time limit specified in Point 21.3.a if the protection title holder makes no opinion, or from receiving date the protection title holder's opinion. This time limit may be prolonged for a maximum of 03 months if the opinions of the applicants for termination or invalidation of the protection title and the third party is different.

Where the protection title holder declares to waive his/her industrial property rights under the provisions of Clause 3, Article 95 of the Intellectual Property Law, the above-said time limit shall be 10 working days from the date of receiving the request.

The time for carrying out other relevant procedures, which are necessary to handle the request for termination or invalidation of the protection, title shall not be included in the above-said time limit.

c) If disagreeing with NOIP's decision or notice on handling of the request for termination or invalidation of the protection title, the applicant or an involved party may lodge an appeal about that decision or the relevant notice in accordance with the procedures specified at Point 22 of this Circular.

d) A decision on termination or invalidation of the protection title shall be published in the Industrial Property Official Gazette and recorded in the National Register of Industrial Property within two months from the decision date.

21.4 Termination or invalidation of international registrations of trademarks

a) For an application for termination or invalidation of an international registration of trademark under the Madrid Agreement or the Madrid Protocol of a third party, NOIP shall notify the request for termination or invalidation to the trademark holder through the International Bureau, setting a time limit of three months from the notification date for the trademark holder to respond.

b) The decision on termination or invalidation of an international registration of trademark shall be sent to the international Bureau for carrying out relevant procedures under the Madrid Agreement or the Madrid Protocol and published in the Industrial Property Official Gazette.

c) Other relevant provisions on the handling of applications for termination or invalidation of international registrations of trademarks shall be the same as those for registrations of trademarks filed in the national format.”

21. Changes and amendments to Point 22 as follows:

“ 22. Complaints and settlement of complaints with regard to procedures for

establishment of industrial property rights

22.1. Persons entitled to complain, objects of a complaint, time limit for complaint and persons responsible for settling complaints

- a) Persons entitled to complain as defined in Clause 1, Article 14 of Decree No. 103/2006/ND-CP are applicants and entities, individuals having rights and benefits directly linked with official notifications or decisions of NOIP provided for in the below paragraph b, who allege that the official notifications or decisions are illegal or nullify or impair their legitimate rights and benefits.
- b) Decisions and official notifications that can be complained as defined in Clause 1 Article 14 of Decree No. 103/2006/ND-CP are decisions and official notifications of NOIP on each procedures in the handling process of industrial property application corresponding to provisions under this Circular, including the following decisions, official notifications:
 - (i) Notifications on refusal of admission of applications (Point 12.2.b);
 - (ii) Decision of accepting valid applications (Point 13.6.b);
 - (iii) Decision on refusal of admission of applications (Point 13.7);
 - (iv) Notifications on accepting or refusing requests for correcting/amending applications, transferring applications/replacing applicants/withdrawing applications (Point 17);
 - (v) Decisions on refusal of granting protection titles (Point 15.7.b and Point 15.7.c); decisions on granting protection titles (Point 18.2.a), except for the case where the corresponding protection titles may be invalidated as defined under Article 96 of the Intellectual Property Law and Point 21 of this Circular;
 - (vi) Decisions of refusal international trademark registration (Point 41.6.g); decisions of accepting international trademark registration (Point 41.6.b, 41.6.d and 41.6.e), except for the case where the corresponding international

registration can be invalidated as defined under Article 96 of the Intellectual Property Law and Point 21 of this Circular;

(vii) Decisions of issuing duplications of protection titles, decisions on re-issuing protection titles (Point 18.3.d (i)); decisions of refusal of issuing duplication of protection titles, decisions of refusal of re-issuing protection titles (Point 18.3.d (iii));

(viii) Notifications on maintaining the protection titles, decisions of refusing the maintenance of protection titles (Point 20.3.b);

(ix) Decisions of renewal of protection titles, decisions of refusal of renewing protection titles (Point 20.4.d);

(x) Decisions of correcting protection titles, decisions of refusing requests for correcting protection titles (Point 20.1.d (i));

(xi) Decisions of cancellation/invalidation a part of/whole protection titles, notifications on refusing request for cancellation/invalidation of protection titles (Point 21.3.b);

(xii) Decisions, notification on the handling of requests for cancellation and invalidation of international registration (Point 21.4.b);

(xiii) Other decisions and official notifications of administrative decision nature.

Notifications that are of information nature, requesting fulfillment of applications will not be considered as administrative decisions and not be the object of complaints, i.e. notifications on examination results, notifications on irregularities, request on correcting, amending documents, intention of refusal, notifications on provisional refusal of international trademark registration.

c) Objects of decisions, notifications being complained that will be examined are industrial property applications as it is at the time of issuing such decisions/notifications. The following contents of complaints are out of

the scope of complaint settlement, therefore are not admitted in the complaint settlement process:

- (i) Requests for change, amendment to industrial property applications which are the object of decisions, notifications being complained;
- (ii) New facts not been submitted by industrial property applicants in the examination process that may change decisions, notifications being complained;
- (iii) New facts in complaint applications which are out of the scope of search and examination responsibility of NOIP in the process of examination of industrial property applications where complainants are not applicants of industrial property applications which are the objects of decisions, notifications being complained. In this case, complainants can request NOIP to conduct the additional examination of new facts and pay prescribed additional fee.

The afore-mentioned cases that meet the criteria under Point 9.3 and Point 9.4 of this Circular can be addressed in accordance with procedures thereof.

d) Decisions, notifications will be considered illegal in the following cases:

- (i) Decisions, notifications were issued in the wrong formats, procedures and authority;
- (ii) Decisions, notifications that have judgement, decision not corresponding with facts, evidence or applying appropriate legal provisions;
- (iii) Decisions, notifications were issued on the basis of examination or assessment results that did not recourse to appropriate legal provisions.

đ) Complaints should be made within the time limit provided for in paragraph 4, Article 14 of Decree No. 103/2006/NĐ-CP. In case, persons entitled to complaint, cannot take action in the said time limit due to subjective obstacles or force majeure provided for in Point 9.5 of this Circular, the time period of that they encounter such subjective obstacle or

force majeure will not be calculated with the condition that complainants have reasonable evidence to prove the situation.

e) The person having authority to settle the first instance complaint is the Director General of the National Office of Intellectual Property. The person having authority to settle the second instance complaint is the Minister of Science and Technology (hereinafter referred as „complaint settlers“).

22.2 Complaints

a) Each complaint should mention one or two or more complained decision(s) or notice(s) if that have the same complained content and for the same complaining reason, provided that the complainant pays the prescribed fee for service of handling industrial property complaint (if any), including fee for complaint examination, fee for searching information for each complained decision or notice as specified at law.

b) A complaint comprises the following documents:

(i) Written declaration for complaining made according to the Model Form 05-KN at Appendix C of this Circular;

(ii) Written explanation of the complaint (according to the provisions of Point 22.2.2c) and proofs supporting the complaining reason (according to the provisions of Point 22.2.2d);

(iii) Copy of NOIP's complained decision or notice and a copy of application for registration of industrial property right that is the object of the complained decision or notice (in case of the second-time complaint); or documents guiding on the above-mentioned documents;

(iv) Copy of the decision on settlement of the first-time complaint (for a second-time complaint);

(v) Power of attorney (if the application is filed through a representative); For the second-time complaint, a copy of the power of attorney under the case as specified at Point 4.5 of this Circular shall be certified by NOIP;

(vi) A copy of receipts of the prescribed fees and charges (if the fees, charges are paid by post or directly paid to the account of NOIP).

c) Written explanation of the complaint must clearly state:

(i) Complained object: the complained decision or notice (clearly stating decision or notice numbers and dates of issuance);

(ii) Reason for complaining: provision that is violated (title of the legal document, provision number) and lawful rights and benefits that are violated;

(iii) Content of the complaint: clearly stating and explaining in detail (evidences accompanied (if any)) on elements of the complained decision or notice that are in contravention of the legal provisions as specified at Point

22.1.d of this Circular;

(iv) Request of the complainant: amending, partially or wholly invalidating the complained decision or notice;

(v) List of accompanied evidences (if any).

d) Proofs include documents (evidence) or objects (exhibits) to prove or clarify the complaining reason. A proof must satisfy the following requirements:

(i) It may be a document in a foreign language enclosed with its Vietnamese translation if the complaint-settler requests;

(ii) If it is a document made and signed by an individual or organization that has no lawful seal or a foreign individual or organization, the signature of that individual or organization must be certified by a notary public or a competent agency at law;

(iii) If it is an information carrier (printed matter, video tape, etc.), the origin and date of distribution or publication of that carrier, or the origin or the date of publication of information stored in that carrier shall be clearly indicated on a case-by-case basis;

(iv) An exhibit must be accompanied with a written description of its features that are directly related to the complained contents.

22.3 Responsibilities of complainants

A complainant shall ensure the truthfulness of supplied information and proofs and are liable for consequences of the supply of untruthful information and proofs.

22.4 Withdrawal of complaints

a) At any time, a complainant may notify in writing the withdrawal of his/her complaint. If the withdrawal of a complaint is made as authorized by the complainant, the mandated withdrawal must be clearly stated in the power of attorney.

b) A withdrawn application shall be considered as having not been filed. The written complaint shall not be returned and the paid amounts of fee for complaint handling service shall not be refunded to the complainant, except that the complaint is withdrawn prior to the date of issuance of the notice on acceptance of or refusal on the complaint.

c) Issuing a decision on cancellation on complaint settling by the complaint-settler if it falls into one of the following cases:

(i) The complainant withdraws the complaint;

(ii) The complaint-settler has twice sent notices of setting up a dialogue or request for clearly certifying complained contents but fails to get any responses from the complainant.

22.5 Acceptance of complaints

a) Within ten days after receiving a complaint, the complaint-settler shall:

(i) Issuing the notice on refusal of the complaint, if it falls into one of the

following cases as specified at Point 22.5.b, in which the reason for refusal is clearly stated; or

(ii) Issuing the notice on acceptance of the complaint if it fails to fall into one of the following cases as specified at Point 25.5.b, in which the date of acceptance is indicated and fees for searching and/or examination to handle complained contents relevant to the complaint (if any) are determined and the time limit of one month for the complainant to pay fees is set.

b) A complaint shall not be accepted if it falls into one of the following cases (i) The complained object is not the official decision or notice according to Point 22.1.b of this Circular;

(ii) The complained decision or notice is indirectly related to legal rights. benefits of the complainant;

(iii) The submission of the complaint fails to follow the provisions on representation service;

(iv) The complaint lacks of the complainant's signature and seal (if any) or finger prints;

(v) The complaint is submitted prior to or subsequent to the fixed time limit according to Point 9.4 of this Circular;

(vi) The decision on second-time complaint handling is issued;

(vii) The complaint has been accepted by the Court or solved by court judgement, decision, except for the court's decision on cancellation on handling administrative case;

(viii) The compliant continues complaining after the 30 day time limit from the date of the decision on cancellation on handling the complaint according to the provisions of Article 10 and Clause 8, Article 11 of the Law on Complaints;

(ix) The complaint fails to indicate elements of the complained decision or notice that are in contravention of the law and only contains requests for amending, supplementing the application that is the object of the decision or notice.

In case of requests for amending, supplementing the applicaiton satisfy conditions as specified at provisions of Point 9.3 and 9.4 of this Circular, the requests can be handled according to procedures as specified at these provisions.

22.6 Time limit for complaint handling

a) Time limit for complaint handling is set according to the provisions of Articles 28 and 37 of the Laws on Complaints.

b) The following time periods are excluded from the time limit for complaint handling:

(i) Time period for the complainant to amend, supplement the complaint dossier;

(ii) Time period for the parties to give responses to the complain-settler according to the provisions of Points 22.7 and 22.10.b of this Circular;

(iii) Time period for searching information, re-examining and other necessary services for complaint handling but not exceeding time limit for re-examining according to Clause 3, Article 119 of the Intellectual property law.

22.7 Related parties

a) For an accepted complaint, the person competent to settle complaints shall notify in writing the complained contents to persons with directly related rights and obligations (herein referred to as “related parties”), setting a time limit of two month from the date of notification for those parties to give their opinions.

b) Related parties may supply information or proofs supporting their arguments within the time limit specified at Point 22.7.a above, and the persons competent to settle complaints shall consider those information or proofs while settling the complaint.

c) The complaint-settler notify in writing opinions of related parties and set the two month time limit from the date of issuance of the notice for the complainant to give comments on the related parties’ opinons.

d) If necessary, the complain-settler continues requesting for related parties’ comments following the above procedures and time limits.

Upon the expiration of the above time limit, if the related party gives no opinions, the complaint shall be settled based on the other related party’s opinion.

22.8 Independent consultant, Advisory council

a) Depending on the complexity of the complaint, the complaint settler may consult the independent consultant and the Advisory council (including the chairman and members).

An independent consultant, the Advisory council takes the role in advising the complaint settler on technical and legal issues related to the complaint and solutions of settlement.

Independent consultants, chairman and members of the Advisory council are persons who have appropriate qualifications, selected from the list of industrial property consultants and other sources (in case none of consultants in that list is found suitable).

The list of industrial property consultants is made and published in the Industrial Property Official Gazette by NOIP, in coordination with the Inspectorate of the Ministry of Science and Technology.

b) The Advisory Council is organized and operated under the following principles:

(i) The Advisory Council is founded pursuant to the decision of the

complaint settler;

(ii) The Advisory Council follows the working principles of meetings, discussing collectively and voting by majority;

(iii) The parties to the complaint, parties who have relevant rights and obligations may be invited to attend meetings of the Advisory Council to clarify the circumstances of the complaint.

c) The following persons shall not be allowed to participate in the Advisory Council and join the complaint as an independent consultant:

(i) The complainee (the person who has issued the complained decision or notice);

(ii) The person who has conducted the examination of the application for industrial property right registration relevant to the complained decision or notice;

(iii) The person who has right and interest directly related to the complaint;

(iv) The person who has participated in the first-time settlement of the complaint (the Advisory Council for the second-time settlement of complaints)

(v) The person who may not be objective in the complaint, if there are grounds to determine.

The persons mentioned at Points 22.8.c (i), (ii), (iii) and (iv) shall have responsibility to justify, explain and provide information related to works that they have done as specified at the contents of the complaint.

d) Opinions of independent consultants, the chairman and members of the Advisory Council and the working results of the Advisory Council must be made in written form.

22.9 Setting-up dialogue

a) The complaint settler sets up the dialogue according to Article 30 of the Law on Complaints

b) Independent consultants, members of the Advisory Council (if any) may be invited to participate in the dialogue.

22.10 Decisions on complaint settlement

a) Based on the result of the review of complained decision or notice, the complaint settler shall issue a decision on complaint settlement.

b) Before issuing a decision on complaint settlement, the complaint settler shall notify the complainant or related parties of the other party's arguments and proofs used in the settlement of the complaint, and the conclusion on the contents of the complaint and set 01-month period from the date of notice for the complainant and related parties to give opinions.

c) A decision on complaint settlement must contain the contents specified at Clause 2, Article 31 (for the first-time complaint) or at Clause 2, Article 40

(for the second-time complaint) of the Law on Complaints.

d) For complaint applications as specified at Point 22.1.c of this Circular, the complaint settler shall issue a decision including the following contents:

- (i) Preserving or demanding to preserve the complained decision, notice;
- (ii) Setting a 01-month period from the date of the decision for the complainant to submit a request for additional examination of new circumstances in the complaint as specified at Point 22.1.c (iii) of this Circular;
- (iii) Calling the complainant's attention to the right to file an application for invalidation of the protection title and the right to initiate an administrative lawsuit at law.

NOIP shall conduct an additional examination of new circumstances as specified at Point 22.10.d (ii) according to procedures of reconducting the examination of applications for registration of industrial property rights upon the opinions of a third party. The additional examination procedures and time limit shall comply with Points 6.2, 6.3, 6.4, 6.5 and Point 16 of this Circular. Based on the result of the examination, NOIP shall issue a decision to preserve, amend or replace the relevant decision and notice.

22.11 A decision on complaint settlement shall be published on the website of the complaint-settling agency within 15 days and in the Industrial Property Official Gazette within two months from the date of its issuance.

22.12 Validity of complained decision, notice and decision on complaint settlement

a) A complained decision, notice shall be still valid during the period of complaint settlement, except where that decision, notice is temporarily suspended under a written decision of the complaint settler as specified at Article 35 of the Law on Complaints.

b) NOIP has responsibility to implement immediately a valid decision on complaint settlement:

(i) A decision on the first-time complaint settlement of the Director General of NOIP shall take effect from the 30th day after its signing if there is no second-time complaint; in case of remote and inaccessible areas, the time limit may be longer but must not exceed 45 days;

(ii) A decision on the second-time complaint settlement of the Minister of Science and Technology shall take effect from the 30th day after its signing; in case of remote and inaccessible areas, the time limit may be longer but must not exceed 45 days;

c) The Inspectorate of the Ministry of Science and Technology has responsibility to notify NOIP on acceptance the second-time complaint within 10 days from its receipt. In this case, decision on the first-time complaint settlement of the Director General of NOIP is invalid. The complained decision,

notice shall still be valid until the decision on second-time complaint settlement takes effect.

d) The second-time complainant has responsibility to immediately notify NOIP on submission of that complaint.

22.13 Complaint and complaint settlement against other administrative decisions on industrial property field

The complaint and complaint settlement against other administrative decisions on industrial property field (including decisions related to industrial property representative, industrial property assessment, industrial property right transfer...) shall be carried out according to the Law on Complaints and followed the same regulations on complaint and complaint settlement of this Circular.

22.14 Measures to limit the occurrence of complaints

a) NOIP shall apply the same regulations as specified at Point 22.8 of this Circular into procedures of processing applications for termination and invalidation of protection titles.

b) If detecting signs of law violation, NOIP has responsibility to examine, review issued decisions, notices to promptly correct, repair, avoid any arising complaint.

With decisions, notices being the subject of the complaint, the change of contents and validity shall be made only when the decision on the complaint settlement takes effect.

c) In the course of settling complaints, the complaint settler shall encourage and facilitate the parties to settle dispute under the law.”.

22. To amend, supplement Point 23 as follows:

a) To amend, supplement Point 23.5 as follows

“23.5 Requirements for declaration

The applicant shall submit 02 copies of a written declaration made according to Model Form 01-SC specified at the Appendix A of this Circular. In the section “International patent classification” of the declaration, the applicant must state the classification criteria of technical solutions sought to be protected according to the latest International Patent Classification (under the Strasbourg Agreement) published by NOIP in the Industrial Property Official Gazette (full classification, including section, class, subclass, group (main group or subgroup)). If the applicant fails to classify or incorrectly classifies, NOIP shall conduct the classification and the applicant shall pay a prescribed classification fee.”.

b) To amend, supplement Point 23.6 as follows:

“23.6 Requirements for invention description

The applicant shall submit two copies of an invention description. An invention description must consist of the sections of invention description and the invention protection coverage. The description may include a drawing (if

necessary) to illustrate the invention.

a) The description section must completely disclose the nature of the technical solution sought to be protected. It must contain sufficient information based on which any person with average skill in the art can deduce the solution; clarify the novelty, inventive steps and susceptibility of industrial application of the technical solution (if the protection title applied for is an invention patent); clarify the novelty and susceptibility of industrial application of the technical solution (if the protection title applied for is a utility solution patent).

Person with average skill in the art means a person who has ordinary technical practice skills and is acquainted with publicly available general knowledge in the art.

b) The description section must consist of contents stated in the following order:

(i) Title of the invention: which briefly expresses the object or objects sought to be protected (hereinafter collectively referred to as the object); the title of the invention must be brief, correct and must not be of promoting or advertising nature;

(ii) Field of utilization of the invention: The field in which the object is utilized or to which the object is relevant. If the invention is utilized in or related to several fields, all these fields must be stated. These fields must comply with the patent classification;

(iii) Prior art of the invention: The prior art in the field of utilization of the invention at the time of filing (known similar objects, if any). That in case there is no information of the prior art of the invention must be clearly stated;

(iv) Purpose of the invention: To clearly state the purpose which the invention is sought to achieve or the task (issue) which to be solved by the invention (for example, to resolve the disadvantages, limitations of the technical solution indicated in the section Prior art of the invention). The purpose or task of the invention must be presented objectively, specifically and must not be of a promoting or advertising nature

(v) Technical nature of the invention: the nature of the object sought to be protected, clearly stating:

- Technical issue to be solved (the purpose of the invention);

- Technical signs (characteristics) which feature the object sought to be protected mean signs (characteristics) featuring solutions to achieve the purpose of the invention (named as basic technical signs) as well as those considered novel compared to those of known similar technical solutions clearly indicated;

- Benefits (effects) expected to be achieved in comparison with the prior art (if any). This section may be described as a separate section, as defined at Point 23.6.b (ix) below:

- (vi) Brief description of accompanied drawings (if any);
- (vii) Detailed description of invention realization variations: detailed description of one or several invention realization variations so that any person with average skill in the art can deduce the invention;
- (viii) Examples of invention realization (if any): indicating one or several invention realization variations. If the invention is characterized by quantitative signs, the specific value of the sign must be indicated, if it is not quantifiable, the identified state of the sign must be indicated. In addition, specific results related to function and purpose that the related object allows to achieve must be indicated;
- (ix) Possible benefits (effects) (if any and if not stated in the technical nature of the invention): may be expressed in terms of improving productivity, quality, accuracy or effectiveness; saving energy consumption, raw materials; simplifying or facilitating in handling, operating, managing or using; solving environmental pollution ... If the benefits (effects) that can be achieved invoke the statistical results from the experimental data, the applicant must provide those necessary experimental conditions and methods.

c) The invention protection coverage (hereinafter referred to as “the protection coverage” or “protection claim”)

The protection coverage (claim) shall be used to determine the scope of industrial property rights to inventions. The protection coverage (claim) must be presented briefly and clearly in conformity with the description and drawings, clearly indicating signs of novelty of the object sought to be protected (hereinafter referred to as “the object”), and comply with the following regulations:

(i) The protection coverage (claim) must be adequately demonstrated by the description, including prerequisite and sufficient substantial technical signs to identify the object, achieve the set objective and distinguish the object from a known object.

(ii) Technical signs within the protection coverage (claim) must be clear, precise and recognizable in the art; terms used in the protection coverage (claim) must be clear and consistent with terms used in the description;

(iii) The protection coverage (claim) should not invoke the description and drawings, except for invocation to parts that cannot be accurately described with words, such as nucleotide sequences and amino acid sequences, diffraction charts, workflow diagrams, etc.;

(iv) If the application contains drawings illustrating the protection claim, signs shown in the protection coverage (claim) may be accompanied with indication numbers put in brackets. Those indication numbers are not considered confining the protection coverage (claim).

(v) The protection coverage (claim) should (is not required to) be expressed in two sections: “Restriction” and “Distinction.” The section “Restriction” covers the title of the object and signs of the object that are identical to those of the latest known object and is connected to the section “Distinction” by the phrase “distinguishable by” or “characterized by” or equivalent expressions. The section “Distinction” covers signs that distinguish the object from the latest known object and are combined with signs of the section “Restriction” to constitute the object sought to be protected.

(vi) The protection coverage (claim) may include one or more than one points. A multi-point protection coverage (claim) may be used to present an object sought to be protected, with the first point (called independent point) and subsequent point(s) used to concretize the independent point (called dependent point(s)); or to present a group of objects sought to be protected, with several independent points, each presenting an object sought to be protected in the group. Such an independent point may have dependent point(s). Each claimed point shall only mention one object sought to be protected and be presented in one sentence;

(vii) Points of the protection coverage (claim) must be numbered with Arabic numerals, followed by a dot.

(viii) A multi-point protection coverage (claim) used to present a group of objects must satisfy the following requirements: Independent points presenting different objects must not invoke other points of the protection coverage (claim), unless the invocation helps avoid total repetition of the content of another point; dependent points must immediately follow the independent point on which they are dependent.”.

c) To amend, supplement Point 23.7 as follows:

“23.7 Requirements for invention abstracts

The applicant shall submit 02 copies of an invention abstract. An invention abstract is used to concisely describe (with no more than 150 words) the invention sought to be protected. The abstract must disclose principal details of the nature of the technical solution only for the informatory purpose. The abstract may contain typical drawings or formulas. All typical drawings, formulas (if any) shall only be clearly presented in a half of A4-sized page.”.

d) To amend, supplement Point 23.8.a as follows:

“a) Apart from the general requirements for an invention description specified at Point 23.6 of this Circular, for an application for registration of an invention concerning genetic sequences or part of genetic sequences, the description section must contain a list of genetic sequences presented according to standard WIPO ST.25 section 2 (ii) (the standard of presentation of a list of nucleotide sequences and amino acid sequences in an invention registration application). The list of genetic sequences must be presented as a separate

section and located at the bottom of the description.”.

đ) To amend, supplement Point 23.9.d as follows:

“d) The deposit of samples of biological materials and certification documents for international patent applications shall comply with the provisions of the Regulations on implementing the Patent Cooperation Treaty (PCT).”.

23. To amend, supplement Point 25 as follows:

a) To amend, supplement Point 25.1.a (ii) and (iii) as follows:

“(ii) Time limit for filing a request for substantive examination of an invention registration application:

- For a request for granting a patent for an invention: 42 months from the filing date or from the priority date if the application is entitled to the priority right;

- For a request for granting a patent for a utility solution: 36 months from the filing date or from the priority date if the application is entitled to the priority right.

In case of force majeure or objective obstacles, the time limit for filing the above-mentioned request for substantive examination may be prolonged according to Point 9.4 of this Circular, but not exceeding 6 months.

(iii) A requester for substantive examination of an invention registration application shall pay the prescribed search fee and substantive examination fee; if a request for substantive examination is filed later than the time limit as specified at Point 25.1.a (ii) of this Circular, the requester shall additionally pay a prolongation charge as prescribed; if the above-mentioned fees and charge are not paid, the request for substantive examination filed shall be considered invalid and NOIP will not conduct the substantive examination of the application.”.

b) To amend, supplement Point 25.3.a as follows:

“25.3 Assessment of compatibility of the object stated in the application with the type of invention/utility solution protection title

a) The object stated in an invention registration application shall be considered incompatible with the type of invention/utility solution protection title applied for by the applicant (invention patent/utility solution patent) if it is not a technical solution, particularly not a product or a process. The method of identifying technical solutions is specified at Point 25.3.b below.”.

c) To amend, supplement Point 25.3.b (i) as follows:

“b) A technical solution an object to be protected as an invention - is a collection of prerequisite and sufficient information on technical methods and/or technical devices (applying law of nature) to solve a given task (problem).

A technical solution may take one of the following forms:

(i) A product in the form of a tangible object, for example: tool, machine,

equipment, part, electric circuit, etc. which is presented by a collection of information identifying a man-made product, characterized by technical signs (features) of its configuration, and functions (is utilized) as a device to meet a certain human need; or a product in the form of a material (elements, compounds and mixtures), for example: material, component, food, pharmaceutical, etc. which is presented by a collection of information identifying a man-made product, characterized by signs (features) of its presence, ratios and state of its elements, and functions (is utilized) as a device to meet a certain human need; or a product in the form of a biological material, for example: gene, genetically modified plant/animal, etc. which is presented by a collection of information on a product containing genetic information modified by human manipulations and capable of self-regeneration;”.

d) To amend, supplement Point 25.4.a (ii) as follows:

“(ii) The creation, production, utilization, exploitation or realization of the above solution shall be repeated with the same result identically to the result stated in the invention description.”.

đ) To amend, supplement Point 25.4.b (iv) as follows:

“(iv) Instructions on the object can only be realized in a limited number of times (unrepeatable);

e) To amend, supplement Point 25.5.a (ii) as follows:

“(ii) Invention registration applications or invention protection titles published by other organizations or countries within 25 years up to the filing date or the date of priority of the application currently under examination (if that application enjoys priority) are stored in the patent database of NOIP and other information sources defined by NOIP, with the scope of search specified at Point 25.5.a (i).

When necessary and possible, the search may be extended to the national scientific & technological database.

g) To amend, supplement Point 25.5.d (i) as follows:

(i) Substantial signs of the technical solution may be its characteristics in terms of physical structure (detail, cluster of details, linkage...) or the composition of the substance (components (presence, proportion), state of elements, etc.) which constitute, together with other substantial signs, a prerequisite and sufficient combination to determine the nature (content) of the object.

The above-mentioned substantial signs may be presented in forms of technical function of an element in the product composition or structure (called functional sign), provided that this presentation is clear enough for an expert with average skill in the art could easily understand the technical means or manners to perform that function in normal conditions without any innovation.

The function, utility of the object sought to be protected is not a substantial technical sign, but may be the purpose or result achieved of that object;”;

h) To add Point 25.5.d as follows:

“d) To not be considered as loss of novelty in respect of patents which have already been published in the exceptions specified at Clause 3 Article 60 of the Intellectual Property Law, the applicant must submit documents related to publication to prove eligibility for exemption. The above-mentioned documents must be submitted together with the application or supplemented according to regulations on amendment and supplementation of applications.”.

i) To amend Point 25.7.d as follows:

“d) Among cases stated at Point 25.7.b, if there are several applications for registration having the same earliest filing date or date of priority, the invention/utility solution protection title may only be granted for only one application among those applications as agreed upon by all applicants, if no agreement is reached, all applications shall be rejected.”.

24. To amend, supplement Point 26 as follows:

“26. Decision on grant, registration and publication of invention patents, utility solution patents.

The issuance of decisions on grant, registration, publication of decision on grant of invention patents or utility solution patents shall comply with the general procedures specified at Points 18 and, 19 of this Circular.”.

25. To amend, supplement Point 27 as follows:

a) To amend, supplement Point 27.1.e as follows:

“e) Identify objects sought to be protected: if objects sought to be protected in applications are classified as national secrets, next steps shall not be performed and paid fees shall be refunded to applicants, except for the preliminary formality examination fee;”.

b) To amend, supplement Point 27.2 as follows:

“27.2. Languages

International applications originating in Vietnam and filed to NOIP must be in English. An application shall be made in three copies.

For applications with insufficient copies, NOIP shall make additional copies and the applicant shall pay the copying service fee.”.

c) To amend, supplement Point 27.3 as follows:

“27.3 International search offices and international preliminary examination offices

For international applications originating in Vietnam, competent international search offices and international preliminary examination offices are national or international patent offices, industrial property or intellectual property offices of Australia, Austria, the Russian Federation, Sweden, the

Republic of Korea, Singapore and the European Patent Office, etc. that are certified by the International Bureau”.

d) To amend, supplement Point 27.4 as follows:

“27.4 International applications designating Vietnam

If an international application designates Vietnam, NOIP is the designated office. In this case, in order to enter the national phase, the applicant shall submit, within 31 months from the filing date or the date of priority (if it is entitled to the right of priority), to NOIP the followings:

a) Two copies of written requests for invention registration, made according to Model Form 01 specified at the Appendix A of this Circular;

b) Copy of the international application (if the applicant requests the entry into the national phase before the date of publication of the international publication);

c) One copy of the Vietnamese translation of the international application description and abstract (the published copy or initially filed original application in case the application has not yet been published, and modified copy and explanation of modified contents in case the international application has been modified under Article 19 of the Treaty);

d) Copy of receipt of fees, charges (if the fees, charges are paid by post or directly paid to the account of NOIP);

đ) Power of attorney (if filing the application through a representative). The applicant may submit the power of attorney with the time limit specified at Point 27.7.a of this Circular and the time limit for supplementing the power of attorney shall not be included in the time limit for application examination.”.

đ) To amend Point 27.5 as follows:

“27.5 International applications designating Vietnam

If an international application designates Vietnam, NOIP is the designated office. The designation of Vietnam shall be made within 22 months from the date of priority, or 03 months from the date of sending the international search report to the applicant or carrying out the publication according to Article 17.2(a) of the Treaty or giving the official written opinion according to Rule 43bis of the Regulations on implementing under the Treaty, whichever is later. In order to enter the national phase, the applicant shall submit, within 31 months from the filing date or the date of priority (if it is entitled to the right of priority), to NOIP the following documents:

a) 02 copies of written request for invention registration, made according to Model Form 01 specified at the Appendix A of this Circular;

b) 01 copy of the Vietnamese translation of the international application description and abstract (the published copy or initially filed original application, if the application has not yet been published, and modified copy and

explanation of modified contents, if the international application has been modified under Article 19 and/or Article 34.2(b) of the Treaty);

c) 01 copy of the Vietnamese translation of annexes to the international preliminary examination report (in case of request for substantive examination);

d) Copy of receipt of fees, charges (if the fees, charges are paid by post or directly paid to the account of NOIP);

đ) Power of attorney (if filing the application through a representative).

The applicant may submit the power of attorney with the time limit specified at Point 27.7.a of this Circular and the time limit for supplementing the power of attorney shall not be included in the time limit for application examination.”

e) To amend, supplement Point 27.6 as follows:

“27.6 Claims for priority

To enjoy the right of priority, the applicant shall reaffirm it in the written request, pay the fee for the examination of the priority claim and submit, upon the NOIP’s request, Vietnamese translations of documents already submitted to the International Bureau and other necessary documents as specified at Rule 17.1(a) of the Regulation on implementing the Treaty.

For PCT applications, the handling of claims for priority shall comply with the Treaty and the Regulation on implementing the Treaty.”.

26. To amend, supplement Point 30.3 as follows

“30.3 Refusal to accept applications

If an applicant, after receiving a NOIP notice on the results of formality examination which indicates errors and states the NOIP’s intended refusal to accept the application according to the provisions of Point 13.6.a of this Circular, fails to correct errors or unsatisfactorily corrects errors or makes no opposition or an unreasonable opposition within the set time limit, NOIP shall send the applicant the decision on refusal to accept the layout design registration application.”.

27. To amend, supplement Point 32.1 as follows:

“32. Decisions on grant, registration and publication of the decision on grant of the certificate of registered layout designs

32.1 Notification of intention to grant the certificate of registered layout design

If no opposition is made by a third party to the registration of a layout design within three months from the date the layout design is published on the Industrial Property Official Gazette, or though an opposition is made, it is later proved by handling results as unreasonable, NOIP shall notify its intention to grant the certificate of registered layout design for the object stated in the application and set the time limit as three months from the date of notification for the applicant to pay fees for publication, registration and charge for grant of

a protection title.”.

28. To amend, supplement Point 33 as follows:

a) To amend, supplement Point 33.2 as follows:

“33.2 Industrial design registration applications must ensure uniformity according to the provisions of Clauses 1 and 3, Article 101 of the Intellectual Property Law and provisions of this Point.

a) An industrial design registration application is considered uniform if:

(i) It requests for protection of one industrial design of a product; or

(ii) It request protection of industrial designs of more than one product in a set of products, of which each product has its own industrial design; or

(iii) It requests protection of an industrial design of a product accompanied with one or several variations of that industrial design. The first variation must be the basic variation.

All variations of an industrial design are not substantially distinguishable from the basic variation and from one another.

b) Product which means object, tool, equipment, product, device or a part to be assembled or component of that product is manufactured by an industrial or manual method, has detailed features and functions and is independently circulated.”.

b) To amend, supplement Point 33.3 as follows:

“33.3 Request for supplying information

a) When there is a ground (information, proof) to doubt over the truthfulness of information in an industrial design registration application, NOIP may request the applicant to submit within two months documents certifying such information, especially documents certifying the lawful right of registration in case the applicant enjoys the right to file from another person (certificate of inheritance right, certificate or written agreement on assignment of the right to file, contract on job assignment or labor contract, etc.).b) NOIP may request the applicant to submit within two months documents certifying the lawful ownership or the lawful right to use trade indications (marks, geographical indications, or trade names), other persons’ protected industrial designs, if it has a ground to doubt that the industrial design stated in the application contains those objects.

c) If no information is supplied by the applicant, or though information is supplied, it fails to satisfy requirements stated at Point 33.3.a and 33.3.b, the application is considered invalid or rejected.”.

c) To amend, supplement Point 33.5 as follows:

“33.5 Requirements for industrial design description

An applicant shall submit one copy of the industrial design description that contains the following contents:

a) Name of the industrial design, which is the name of the product imbued with the industrial design, expressed briefly in common words and phrases, not of advertising nature, does not contain symbols, annotations and trade indications;

b) Field, in which the industrial design is used, is a specific field in which the product imbued with the industrial design is used, clearly states the purpose of using the product, function, utility of that product;

c) The most similar industrial design: To clearly state whether there is a similar industrial design, and in case there is a similar industrial design, to clearly state an industrial design which is least different from the industrial design of the same product stated in the application and widely known prior to the filing date or the date of priority (if the application contains a claim for priority), indicating the information source from which the most similar industrial design is publicly disclosed;

d) List of photos or drawings, which enumerates photos, three-dimensional drawings, shadows, cross-sections, etc., of the industrial design one after another according to the ordinal numbers of those photos or drawings;;

đ) The section of description of the industrial design must satisfy the provisions of Clause 2, Article 103 of the Intellectual Property Law, and is clearly stated as follows:

(i) It fully discloses the nature of the industrial design sought to be protected, adequately showing design features presenting the nature of the industrial design as well as new design features that are distinguishable from the most similar industrial design defined at Point 33.5.c and consistent with those shown in the set of photos or drawings;

(ii) Design features of the industrial design sought to be protected must be presented one after another in the following order: Configuration features, line features, correlation between configuration and/or line features, color features (if any);

(iii) For a product that have different usages (for example: a product with cover or foldable), its industrial design must be described in different states;

(iv) If the industrial design consists of many variations, the basic variation must be stated in the application and the remaining variations must be numbered in order; additionally, distinctive characteristics of the basic variation in comparison with those of remaining variations must be clearly indicated;

(v) If an industrial design is the design of a set of products, the design of each product in the set must be described.

e) Coverage of protection (or claim for protection) of the industrial design: Fully enumerating prerequisite and sufficient design features to identify the nature of the industrial design sought to be protected and the scope of industrial property

rights to the industrial design, shown on photos or drawings stated in the application, and including new and distinctive design features in comparison with known similar industrial designs.”.

d) To amend, supplement Point 33.6 as follows:

“33.6 Requirements for sets of photos or drawings of industrial designs

An applicant shall submit four sets of photos or four sets of drawings of an industrial design, presenting objects sought to be protected uniformly and precisely, printed or placed on unframed A4-sized papers. Sets of photos or drawings must fully present design features of the industrial design sought to be protected, based on which any person with average knowledge in the art can identify that industrial design, and follow the following guidance:

a) Photos or drawings must be clear and well defined; the industrial design must be presented with unbroken lines; the background of a photo or drawing must be monochrome and contrast with the colour of the industrial design; a photo or drawing must show only the product imbued with the industrial design sought to be protected (not accompanied with another product), except for cases specified at Point 33.6.g and 33.6.h, not including indications of technical drawings or indications explaining the industrial design, except for brief indications necessarily to indicate cross-sections, magnified pictures, opening and closing states.

b) Photos or drawings must show the industrial design on the same scale. The size of the industrial design shown in photos or drawings must neither be smaller than 90 mm x 120 mm nor larger than 190 mm x 277 mm.

c) Photos and drawings must show the industrial design viewed in the same direction and be numbered in the following order: three-dimensional picture of the industrial design, front, rear, right-side, left- side, top-down and down-top shadows of the industrial design; shown shadows must be frontispieces.

d) Photos or shadows similarly or symmetrically to available ones, photos of the bottom surface of large-sized and large-weighted product, photos or shadows of the surface with too low flatness of the industrial design are unnecessary to be shown in the application, provided that they are clearly stated in the list of photos, drawings of the description.

đ) For the industrial design of an product expandably on flat surface (for example, box, package), shadows of the industrial design may be replaced with photos or drawings of the industrial design in an expanded state.

e) Depending on the complexity of an industrial design, more photos or three-dimensional drawings from other angles, cross-sections or magnified pictures of parts, pictures of knocked down components or parts of the product, photos or drawings illustrating the position for fitting or use of such part on the

complete product may be required to clearly show the nature and design features of the industrial design (not to establish the industrial property rights for the industrial design of those parts).

g) For the industrial design of the product assembled or constituted from different parts, photos or drawings of each part may be supplied with the only view to illustrating, but establishing the industrial property rights for the industrial design of those parts.

h) Photos or drawings must show the industrial design at the same selected state of usage; photos or drawings showing other states of usages may be supplied to present the nature of the industrial design

i) For the application with several variations, the basic variation must be firstly presented. Each variation of the industrial design must be fully presented by an adequate set of photos or drawings according to the provisions of this Point.

k) For a set of products, there must be three- dimensional pictures of the whole set and a set of photos or drawings of each product in the set according to the provisions of this Point.”.

d) To amend, supplement Point 33.7 as follows:

“33.7 Design features of industrial designs

a) Design features of an industrial design are elements presented in the form of lines, configurations, colors, position or size correlation, which constitute, in combination with other features (signs), a gathering prerequisite and sufficient for the formation of that industrial design.

b) Substantial design features are design features that are easily perceived/remembered, prerequisite and sufficient to determine the nature of the industrial design and distinguish the industrial design from another industrial designs imbuing with the products of the same type.

The products of the same type are products having the same or similar purpose and function of utilization. Finished products and parts used for assembling or constituting a complete product are products of different types.

c) The following elements are not considered as substantial design features of an industrial design:

(i) Configurations and lines dictated by the technical functions of the product (for example: the flat shape of data-recording disks is dictated by the relative motion between disks and reading heads...);

(ii) Elements whose presence in the combination of signs gives no aesthetic impression (impression of the shape of the product remains unchanged with or without those elements; for example, if a change in a familiar configuration or line is not impressive enough to be noticed, the changed configuration or line will therefore be perceived as the old one);

- (iii) Materials used for manufacture of the product;
- (iv) Signs affixed or stuck on the product merely for the purpose of informing or guiding the origin, features, composition, utility, usage, etc. of the product, for example, words in a goods label (like producer, commercial indication, origin, barcode, etc.), trademark, geographical indication, etc.;
- (v) Size of the product, except for change of size of patterns of a fabric sample or similar materials.
- (vi) Other elements that fail to satisfy conditions stated at Point 33.7.b of this Circular.”.

29. To amend, supplement Point 35 as follows:

- a) To amend, supplement Point 35.1 as follows:

“35.1 **Assessment of similarity of industrial designs:**

- a) **Two industrial designs are considered identical when they are used for a product of same type and have the same gathering of substantial and insubstantial design features;**
- b) **Two industrial designs are considered not significantly different when they are used for a product of same type and have the same gathering of substantial design features;**
- c) **Two industrial designs are considered similar when they are used for a product of same type and have at least one identical or not significantly different substantial design feature;**
- d) **Two industrial designs among similar industrial designs are considered most similar when the number of their identical or not significantly different design features is larger than that of all other similar industrial designs;**
- d) Two industrial designs are considered significantly different when they are used for a product of different or same type, but have at least one different substantial design feature.”.

- b) To amend, supplement Point 35.3 as follows:

“35.3 **Assessment of compatibility of objects stated in applications and the type of industrial design protection title**

An object stated in an application shall be considered incompatible with the type of industrial design protection title when:

- a) **The subject is not the appearance of a product. The appearance is design features (shapes, lines, colors or combination of these elements) which are visible in the process of using the product (exploitation of a product’s utility by ordinary methods and by any user, excluding its maintenance, preservation or repair);**
- b) The subject stated in the application is:
 - (i) **A product’s appearance dictated by its mandatory technical characteristics;**

(ii) A civil or industrial construction work's appearance except for the appearance of modules or separate units which are independently used or assembled to constitute a construction work such as shops, kiosks, mobile homes or similar products.”.

c) To amend, supplement Point 35.7 as follows:

“35.7 Assessment of novelty of industrial designs according to the Article 65 of Intellectual Property Law

a) Method of assessment of novelty of industrial designs

To assess the novelty of an industrial design stated in a application, it is necessary to compare the gathering of substantial design features of that industrial design with that of each reference industrial design found through the information search.

b) Conclusion on novelty of industrial designs

The industrial design stated in an application shall be considered novel if:

(i) No reference industrial design found in the mandatory minimum information source; or

(ii) Though a reference industrial design is found in the mandatory minimum information source but the industrial design stated in the application is considered significantly different with reference industrial designs; or

(iii) The reference industrial design is the industrial design stated in the application which is published/disclosed in the cases specified at Clause 3 and 4 Article 65 of Intellectual Property Law.”.

d) To amend, supplement Point 35.8.a as follows:

“a) Method of assessment of creativity of industrial designs

To assess the creativity of an industrial design stated in an application, it is necessary to compare the gathering of substantial design features of that industrial design with that of reference industrial designs found through the information search.”.

d) To amend, supplement Point 35.9 as follows:

“35.9 Inspection of the first-to-file rule for industrial designs

For industrial design applications considered satisfying conditions of protection, before issuing the notice on intended issuance of industrial design patent according to Point 15.7.a (iii) of this Circular, NOIP shall conduct the inspection according the following regulations to ensure the first-to-file rule according to Clause 1 and 3 Article 90 of Intellectual Property Law:

a) To inspect the first-to-file rule, it is necessary to search information from mandatory source specified at Point 35.4.b (iv) of this Circular.

b) The information search is to find out industrial design applications of products of same type which are similar or not significantly different, or to find out industrial design applications of products having part(s) whose industrial

design is identical or not significantly different with registered industrial designs, and to identify the application having the earliest filing date or date of priority.

c) If there are several applications in the cases specified at Point 35.9.b, the industrial design patent shall be only granted to the valid application having the earliest filing date or date of priority among those applications satisfying conditions for grant of industrial design patents.

d) Trong số các đơn thuộc trường hợp nêu tại điểm 35.9.b trên đây đăng ký cho sản phẩm cùng loại, nếu có nhiều đơn cùng có ngày nộp đơn hoặc ngày ưu tiên sớm nhất thì Bằng độc quyền kiểu dáng công nghiệp chỉ có thể được cấp cho một đơn duy nhất trong số các đơn đó theo thỏa thuận của tất cả những người nộp đơn; nếu không thỏa thuận được thì tất cả các đơn đó đều bị từ chối cấp văn bằng bảo hộ.”. Among the applications in the cases specified at Point 35.9.b which register for a product of same type, if there are several applications having the same filing date or date of priority, the industrial design patent shall be granted for only one application among those applications as agreed by all applicants; if no agreement is reached, all the applications shall be refused to grant industrial design patent.

30. To amend, supplement Point 36 as follows:

“36. Decisions on grant, registration and publication of decision on grant of industrial design patents

Procedures for issuance of decisions on grant, registration and publication of decision on grant of industrial design patent shall comply with the general procedures as specified at Points 18 and 19 of this Circular.”.

31. To amend, supplement Point 37 as follows:

a) To amend, supplement the first paragraph of Point 37.3 as follows:

“37.3 If there is a ground (information, evidence) to doubt about the truthfulness of information supplied in the application, NOIP may request the applicant to submit within one month documents to certify such information, probably as follows:”

b) To add Point 37.3 as follows:

“g) Other appropriate documents to clarify the truthfulness of information supplied in the application”.

c) To amend, supplement Point 37.4.b (iii) as follows:

“(iii) If the applicant fails to clearly indicate a substantial mark or a substantial goods or service, all marks and all goods or services related to the mark stated in his/her application shall be considered independent from one another. The assessment of distinctiveness of the mark stated in the application shall comply with general provisions on assessment of distinctiveness as specified at Point 39 of this Circular.”.

d) To amend, supplement Point 37.4.c as follows:

“c) For a certification mark, the applicant shall briefly describe in the written declaration characteristics of goods or services certified by the mark (characteristics on origin, raw materials, materials, method of production, method of providing service, quality, accuracy, safety or other characteristics of goods or services bearing the mark).”.

đ) To add Point 37.5^a as follows:

“37.5^a Organizations which have the right to register collective marks according to Clause 3 Article 87 of Intellectual Property Law.

a) Collective organization lawfully established under Clause 3 Article 87 of Intellectual Property Law is an organization which has at least 02 members is established according to applicable laws. Members of that organization have independent production, business activities, and their own goods, services.

b) The following organizations shall be considered as collective organizations according to Point a:

(i) Cooperative alliance; cooperatives under Law of Cooperatives, if the Charter clearly states that members have independent production, business activities;

(ii) Group of companies under Law of Enterprises;

(iii) Associations under laws on associations, if the Charter clearly states that members have independent production, business activities;

(iv) Other organizations that satisfy the conditions as specified at Point 37.5^{a.a} of this Circular.”.

e) To add Point 37.5^b as follows:

“37.5^b Organizations that have the right to register certification marks according to Clause 4 Article 87 of Intellectual Property Law

a) Organizations which have function of controlling and certifying the characteristics (quality, origin,...) of goods or services bearing the mark are organizations which carry out or assign, hire, authorize...other organizations to carry out the above-mentioned controlling and certifying activities in compliance with functions under laws, or are recognized at the business registration certificate, charter, decision on establishment, decision on task assignment... of those organizations.

b) If doubting on the function of controlling, certifying of organizations which register certification marks, NOIP has the right to request organizations to submit evidence.”.

g) To add Point 37.6.h as follows:

“h) List of members using the collective mark.”.

h) To amend, supplement Point 37.7.a as follows:

“a) Written permission of using place name or other signs indicating

geographical origin of a local product to register collective mark, certification mark bearing that sign shall be issued by the following competent authorities:

(i) People's committee of province/municipality where the geographical area corresponds to place or other signs indicating geographical origin of local product (if the geographical area belongs to a locality);

(ii) All People's committee of province/municipality where the geographical area corresponds to place or other signs indicating geographical origin of local product (if the geographical area belongs to several localities).”.

32. To amend, supplement Point 39.12.a (i) as follows:

“(i) It is identical or similar to the name or emblem of a nation or territory (national flag, national emblem, name of the nation or a locality) or confusingly similar to the name or emblem of a nation or territory, causing a mislead that goods or services bearing the sign originate from that nation or territory;”.

33. To amend, supplement Point 40 as follows:

“40. Decision on grant, registration and publication of decision on grant of certificate of registered marks

Procedures for issuance of decision on grant, registration and publication of decision on grant of certificate of registered marks shall comply with the general procedures as specified at Points 18 and 19 of this Circular.”.

34. To amend, supplement Point 41 as follows:

a) To amend, supplement Point 41.6 as follows:

“41.6 Processing of international mark registration applications designating Vietnam

a) After receiving a notice of the International Bureau on an international mark registration application designating Vietnam, NOIP shall conduct the substantive examination of the application according to the procedures applicable to national applications. Within 12 months after the International Bureau issues the notice, NOIP shall make a conclusion on protectability of the mark.

b) For a mark which satisfies conditions of protection under Vietnamese law, NOIP shall carry out the following procedures:

(i) Before the expiry of the period of 12 months mentioned at the Point a, NOIP shall issue a decision on protection of internationally registered mark, record it in the national register of marks (Part “internationally registered mark”) and send the International Bureau a notice of protection of internationally registered mark in Vietnam under Model Form 4 of the International Bureau; and

(ii) NOIP publishes the decision in the Industrial Property Official Gazette within 02 months from the date of its issuance.

The protection coverage (volume) shall be certified according to the

content of the request of the mark international registration application recorded by the World Intellectual Property Organization (WIPO) and certified by NOIP.

c) For a mark which has a part or whole of goods or services that do not satisfy the conditions of protection or whose the international registration still contains errors (for example, regulation on using collective marks, certification marks, photos or drawings representing the three-dimensional trademark perspective ... are missing), before the expiry of the period of 12 months mentioned at Point 41.6.a, NOIP shall issue a notice of temporary refusal according to Model Form 3 of the International Bureau, which clearly mentions contents and reasons for refusal; and send it to the International Bureau.

d) Within 3 months from the date that NOIP sends the notice of temporary refusal with a part of whole of goods or services, the applicant has the right to correct errors or to make opposition to NOIP's temporary refusal.

Correcting errors or making opposition to temporary refusal is carried out in compliance with procedures for national applications, including the mode of filing applications.

đ) In case that the NOIP intends to refuse a part or whole of list of goods or services (mentioned in the notice of temporary refusal), if within 3 month period as stated at Point d, the applicant corrects errors successfully and/or makes a reasonable opposition to that temporary refusal, NOIP shall carry out the following procedures:

(i) NOIP shall issue a decision on protection of internationally registered mark with the protection coverage (volume) corresponding to goods, services that satisfies the conditions of protection; record it in the national Register of marks (Part "internationally registered mark"); and send the International Bureau a notice of protection of internationally registered mark in Vietnam according to Model Form 5 of the International Bureau;

(ii) NOIP shall publish the decision in the Industrial Property Official Gazette within 02 months from the date of its issuance.

e) In case that NOIP intends to refuse a part of list of goods or services (mentioned in the notice of temporary refusal), if within 3 month period as mentioned at Point d, the applicant fails to correct errors or unsatisfactorily corrects errors or makes no opposition or makes unreasonable opposition to that temporary refusal, NOIP shall apply the same procedures as specified at Point 41.6.đ with only goods, services that satisfy the conditions of protection (goods, services that are not mentioned in the temporary refusal).

g) In case that NOIP intends to refuse the whole list of goods, services (mentioned in the notice of temporary refusal), if within 3 month period as mentioned at Point d, the applicant fails to correct errors or unsatisfactorily corrects errors or makes no opposition or makes unreasonable opposition to that

temporary refusal, NOIP shall issue a decision on refusal of protection of internationally registered mark and sends the International Bureau a notice confirming the total refusal according to Model Form 6 of the International Bureau.

h) The procedures for making and settling oppositions to decisions mentioned at Points 41.6.d, e and g shall be carried out in compliance with procedures as for national applications specified at Point 22 of this Circular if there is a ground that the decision is issued in contravention of applicable laws related to the contents of decision and procedures of issuance of decision. The results of settlement shall be noticed by NOIP to the International Bureau and to the applicant.

i) From the date that the international trademark registration comes into force in Viet Nam, as per request of the trademark owner, NOIP shall issue a certificate of internationally registered trademark in Vietnam, provided that the applicant has paid prescribed fees and charges.”

b) To amend, supplement Point 41.8 as follows:

“41.8 Mark registration applications converted due to invalidation of mark international registrations

a) If a mark international registration in Vietnam of a mark owner who is a national of a nation contracting only to the Madrid Protocol is invalidated under Article 9^{quinquies} of the Madrid Protocol, such person has the right to file a converted mark registration application to NOIP for registration of protection of the very mark for part of or the whole list of goods and services recorded in the invalidated mark international registration.

The applicant shall pay prescribed fees, charges as for national trademark applications. For mark registration application converted from an international registration protected in Viet Nam, the applicant shall not pay the publication fee.

b) A converted mark registration application shall be accepted as validated if it satisfies the following conditions:

(i) It is filed within 03 months from the date of invalidation of the relevant mark international registration;

(ii) Goods, services stated in the converted mark registration application are on the list of goods and services stated in a relevant mark international registration;

(iii) The application shall be made according to Model Form 07-ĐKCD as regulated in Appendix C of this Circular (in which the list of goods, services in Vietnamese shall conform to the list of goods, services in the relevant international registration);

(iv) The application shall satisfy all other conditions on formality of a

mark registration application under Vietnamese laws;

(v) The applicant shall fully pay the prescribed fees and charges.

c) A converted mark registration application is recognized to bear the filing date or the date of priority of the relevant mark international registration application (if the mark international registration application enjoys the right of priority under international treaties), except where there are grounds for refusal.

d) NOIP shall conduct formality examination with converted mark registration application according to conditions of conversion mentioned at Point 41.8.b.

For elements on formality which have been accepted by the International Bureau in the relevant international registration, NOIP shall not re-conduct examination, except where there are errors in the application (for example, regulation on using the collective mark, regulation on using the certification mark, photos or drawings representing the three-dimensional trademark perspective ... are missing). NOIP shall issue a decision on refusal of application if the application does not satisfy conditions mentioned at Point 41.8.b.

đ) For mark registration application converted from an international registration protected in Viet Nam, NOIP shall not re-conduct substantive examination. If the application satisfies conditions mentioned at Point b, NOIP shall issue a decision on grant of protection title, record it in the national Register of marks, publish the decision in the Industrial Property Official Gazette.

e) For a validated converted mark registration application which is other than the case mentioned at Point 41.8.đ, NOIP shall conduct procedures of acceptance, publication, substantive examination and further procedures as for national applications.”.

35. To amend, supplement Point 42 as follows:

a) To amend, supplement Point 42.3 as follows:

“42.3. Documents evidencing the ownership and reputation of a mark may include information on the scope, scale, level and continuity of the use of the mark, including an explanation of origin, history and time of continuous use of the mark; number of nations in which the mark has been registered or recognized as a well-known mark; list of goods and services bearing the mark; the territorial area in which the mark is circulated, turnover from products sold or services provided; quantity of goods and services bearing the mark manufactured or sold; property value of the mark, price of assignment or licensing of the mark and value of investment capital contributed in the form of the mark; investment in and expenses for advertising and marketing of the mark, including those for participation in national and international exhibitions; infringements, disputes and decisions or rulings of the court or competent

agencies; surveyed number of consumers knowing the mark through sale, purchase, use, advertisement and marketing; rating and evaluation of reputation of the mark by national or international organizations or the mass media; prizes and medals awarded to the mark; results of examinations held by intellectual property assessment competent organizations.”.

b) To amend, supplement Point 42.4 as follows:

“42.4 If the recognition of a well-known mark causes a decision on handling infringement of that well-known mark according to Point d Clause 1 Article 129 of Intellectual Property Law or a decision on refusal of protection of other well-known mark according to Point i Clause 2 Article 29 of Intellectual Property Law, that well-known mark shall be recorded in the list of well-known marks kept at the NOIP for purpose of reference in the intellectual property right establishment and protection.”.

36. To amend, supplement Point 43.4 as follows:

a) To add Point 43.4.a (v) as follows:

“(v) Information on self-testing mechanism of nature/quality of product.”.

b) To amend, supplement Point 43.4.b as follows:

“b) The description of the nature/ quality/ reputation of the product must be accompanied with documents proving that information on the nature/ quality/ reputation are grounded and true (results of examination, research, survey, etc.)”.

37. To add Point 45.3.d as follows:

“d) Criteria(s) to identify place names, other signs indicating geographical origin of product are applied according to the Point 37.8 of this Circular.”.

38. To amend, supplement Point 46 as follows:

“46. Decision on grant, registration and publication of decision on grant of certificates of registered geographical indications

Procedures for issuance of decisions on grant, registration and publication of decision on grant of certificates of registered geographical indications shall comply with the general provisions of Points 18 and 19 of this Circular.”.

39. To amend, supplement Point 47 as follows:

a) To add Point 47.1.h as follows:

“h) A dossier for registration of a contract on transfer of collective mark, certification mark, shall comprise, besides the above-mentioned documents, the followings:

(i) Regulation on using collective mark, regulation on using certification mark of the licensee according to the Article 105 of Intellectual Property Law;

(ii) Documents proving the right to register certification mark, collective mark of licensee according to Clause 3 and Clause 4 Article 87 Intellectual Property Law.

In this case, NOIP re-examine the right to register marks and the regulation on using marks. The applicant must pay examination fee besides the prescribed fees, charges for dossier of registration of a contract on transfer of industrial property rights.”.

b) To amend, supplement Point 47.2.b as follows:

“b) 02 copies of the contract (02 originals or 02 copies accompanied with the original for reference, except for the valid copies); if the contract is made in a language other than Vietnamese, it must be enclosed with its Vietnamese translation; if the contract consists of many pages, each page must be appended with the parties’ signatures for certification or every two adjoining pages must be appended with a seal on their inner edges;”.

40. To amend, supplement Point 48 as follows:

a) To amend, supplement Point 48.1 as follows:

“48.1 If a dossier for registration of a contract on transfer of industrial property rights contains no error stated at Point 48.3 of this Circular, NOIP shall carry out the following activities:

a) NOIP shall issue a decision on recognizing the transfer of industrial property rights (for a contract on transfer of industrial property rights) and decision on grant of certificate of registration of the contract on licensing of an industrial property object (for a contract on licensing of an industrial property object);

b) For a contract on transfer of industrial property rights, NOIP shall record in the protection title the new owner; in case of partial transfer of the list of goods and services bearing the protected mark, NOIP shall grant a new certificate of registered mark to the transferee and confine the list of goods/services in the original protection title for the transferred part;

c) For a contract on licensing of an industrial property object: NOIP shall grant a certificate of registration of the contract on licensing of an industrial property object to the dossier-filing person; to append the registration seal on 02 originals or copies of the contract, of which one shall be handed to the dossier-filing person and the other kept by NOIP;

d) To record the assignment of industrial property rights in the national Register of assignment of industrial property rights;

đ) To publish the decision on recognizing the assignment of industrial property rights and the decision on grant of a certificate of registration of the contract on assignment of industrial property rights in the Industrial Property Official Gazette within 02 months from the date of signing the decision.”.

b) To amend, supplement point 48.2 as follows:

“48.2 If a dossier for registration of a contract on assignment of industrial property rights contains errors defined at Point 48.3 of this Circular, NOIP shall

carry out the following procedures:

a) Issuing a notice on its intended refusal of registration of the contract, clearly stating errors of the dossier and setting a period of 02 months from the date of signing of the notice for the dossier-filing person to correct the errors and make an opposition to the intended refusal of registration of the contract;

b) Issuing a decision on its refusal of registration of the contract if the dossier-filing person fails to correct or unsatisfactorily corrects the errors, makes no opposition or an unreasonable opposition to the intended refusal of registration of the contract within the set period.”.

41. To amend, supplement Point 49 as follows:

a) To amend, supplement Point 49.2.b as follows:

“b) A dossier requesting extension of a contract must be filed within one month before the expiration of the contract term stated in the certificate of registration of the contract on licensing of an industrial property object.”.

b) To amend, supplement Point 49.3.b as follows:

“b) If the dossier contains errors, NOIP shall issue a notice on its intended refusal of recording the modification of contents, extension or termination of validity of the contract on licensing of an industrial property object, clearly stating the dossier’s errors and setting a period of 02 months from the date of issuance of the notice on its intended refusal for the dossier-filing person to correct the errors or make an opposition to the intended refusal of registration of the contract.

If the dossier-filing person fails to correct or unsatisfactorily corrects the errors, makes no opposition or an unreasonable opposition to the intended refusal of registration of the contract within the set period, NOIP shall issue a decision on its refusal of recording the modification of contents, extension or termination of validity of the contract on licensing of an industrial property object.”.

42. To amend, supplement point 55 as follows:

“55. Renewal of practice certificates

NOIP shall carry out procedures for renewal of industrial property representation service practice certificates upon written requests made by an industrial property representative according Model Form 02-CLCC specified at Appendix E of this Circular in case there are changes of information in the practice certificate or the practice certificate is lost or irreparably damaged (torn, stained or faded).

Procedures for renewal of practice certificates shall be carried out as for grant of practice certificates specified at Point 53.3 of this Circular.”.

43. To amend, supplement Point 56 as follows:

a) To amend, supplement Point 56.1 as follows:

“56.1 Organizations, individuals who satisfy all requirements to conduct business, practice of industrial property representation service may request NOIP to record in the national Register of industrial property representation according to Clause 1 Article 156 Intellectual Property Law and must pay prescribed fees and charges.”.

b) To amend, supplement Point 56.2.d as follows:

“d) Copy of receipt of fees, charges (if the payment is made by post or directly to the account of NOIP).”

c) To amend, supplement Point 56.3.c as follows:

“c) Copy of receipt of fees, charges (if the payment is made by post or directly to the account of NOIP).”.

44. To amend, supplement Point 57 as follows:

a) To amend, supplement Point 57.1 as follows:

“57.1 An industrial property representation service organization has the right and the obligation to request NOIP to record changes related to information which has been already recorded in the the national Register of industrial property representation as regulated at this point and must pay prescribed fees, charges.”.

b) To amend, supplement Point 57.2.d as follows:

“d) Copy of receipt of fees, charges (if the payment is made by post or directly to the account of NOIP).”.

45. To amend, supplement point 59 as follows:

a) To amend, supplement the first paragraph of Point 59 as follows:

“59. Examination on industrial property representation profession

The examination on industrial property representation profession (hereinafter referred to as “the examination”) according to the provisions of Article 28 of the Decree No. 103/2006/NĐ-CP shall be conducted according to the following specific provisions:”.

b) To amend, supplement Point 59.2.b (iii) as follows:

“(iii) Documents proving that the dossier-filing person has been trained in industrial property law or is experienced in this activity according to Point d Clause 2 Article 155 Intellectual Property Law (the originals or the copies accompanied with the original for reference, except for the valid copies):

- Copies of certificates of graduation from training courses on industrial property law recognized by the Ministry of Science and Technology; or

- Graduation or postgraduate dissertation on industrial property and certificate of the training establishment where the dossier- filing person has made the dissertation; or

- Copy of employment decision, labour contract or other documents with written certification of a competent agency proving that the dossier-filing person

has been personally engaged for five or more consecutive years in the examination of industrial property registration applications at a national or international industrial property office;

- Copy of employment decision, labour contract or other documents with written certification of a competent agency proving that the dossier-filing person has been personally engaged for five or more consecutive years in industrial property law-related activities, including inspection, examination, procuracy, adjudication, legal affairs, consultancy on industrial property law, state management on intellectual property; or scientific research (with title of researcher) or lecturing of industrial property);”

c) To add point 59.2.b (vi) as follows:

“(vi) If the document is made in a language other than Vietnamese, it must be enclosed with its Vietnamese translation as per request from NOIP”.

46. To amend, supplement Point 61 as follows:

“61. Access to and exploitation of information in the national database on industrial property

All organizations and individuals have the right to access to and exploit information in the national database on industrial property by 02 ways:

a) Self-searching for information in the database at public access points set by NOIP or in the internet.

b) Using the service of searching, providing information, documentation via the website of NOIP and must pay the prescribed fees.”.

47. To amend, supplement point 62 as follows:

“62. Service of searching and providing industrial property information & documentation via website

62.1 When requesting NOIP to search and provide industrial property information & documentation, a requester shall make a search request slip (according to Model Form 01-YCTCSC, 02-YCTCKD and 03-YCTCNH defined at Appendix F of this Circular), clearly stating the search purpose and scope (field, type of data carrier, search time, country or region subject to the search, etc.), or folder information to define requested documentation and must pay prescribed fees.

62.2 Within one month from the date of receiving a search request slip, NOIP shall reply to the requester according to the following regulations:

a) For a valid search request (with a valid search request slip defined at Point 62.1 of this Circular and a receipt of the search charge), NOIP shall send a search report and/or documentation to the requester.

b) For an invalid search request (with an invalid search request slip, unclear search purpose and scope, no payment of the search charge), NOIP shall notify its refusal to fulfill the search request clearly stating the reasons for

refusal.

62.3 A search report contains only information found and indications to origins of such information. If no information is found in requested sources above, the search report must also state that.

A search report must not contain comments or assessments of found information.

62.4 A search report must clearly state the full name of the person conducting the search and responsible for the search results.

62.5 The service of providing documentation via website is made under contract between NOIP and the state management agencies and public service delivery units on industrial property and on scientific and technological information.”.

48. To add Point 63.3 as follows:

“63.3 NOIP is responsible for collecting statistics on the information contained in the national database on industrial property for the task of state management of industrial property in provinces and municipalities. (at least every 6 months). ”

49. To amend, supplement point 65 as follows:

“65. Regulation on carrying out of industrial property procedures

NOIP is responsible for issuing a regulation on carrying out of industrial property procedures in compliance with the Decree No. 103/2006/NĐ-CP and this Circular.”.

Article 2.

1. To delete paragraph 2 Point 13.2.g, 15.4, 15.5, 17.3.c, 18.2.c, 27.4.b, 27.5.b, 60.2.c and 60.2.d.

2. To replace phrase “Decree on industrial property” with phrase “Decree No. 103/2006/NĐ-CP” at Points 2.2, 9.1, 13.5.c, 22.1, 59 and 65.

3. To replace phrase “notice” with phrase “decision” at Points 13.6.b, 14.3, 15.7.b, 15.7.c, 17.1.a, 17.2.b, 17.2.c, 17.3.a, 18.3.d (iii), 20.4.d (ii), and 48.2.b.

4. To replace phrase “patent for invention” with phrase “patent for invention/utility solution” at Points 2.1, 20.1.c (i), 20.3 and 25.3.

Article 3. Implementation provisions

This Circular takes effect on January 15, 2018./.

Filed.

**PP. The Minister
The Deputy Minister**

(signed)

