INTELLECTUAL PROPERTY LAW

Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Section of the 10th National Assembly dated 25 December 2001;

This Law stipulates intellectual property rights.

Part One

GENERAL PROVISIONS

Article 1. Scope of regulation

This Law stipulates copyright, copyright - related rights; industrial property rights; rights in plant varieties and for the protection of these rights.

Article 2. Applicable subjects

1. This Law applies to legal entities, individuals and other subjects (hereinafter referred to as organizations and individuals) of Vietnam.

2. Foreign organizations and individuals shall be entitled to the protection of intellectual property rights under this Law if they satisfy the requirements provided for in this Law and international treaties to which Vietnam is party.

Article 3. Objects of intellectual property rights

1. Objects of copyright include literary, artistic and scientific works; objects of copyright - related rights include performances, sound recordings, video recordings; broadcasting programs; satellite signals carrying encrypted program.

2. Objects of industrial property rights include inventions; industrial designs; layout-designs of semi-conductor integrated circuits; business secrets; trademarks; trade names and geographical indications.

3. Objects of rights to plant varieties are plant varieties and its propagating materials.

Article 4. Interpretation of terminologies

In this Law, the following terminologies shall be understood as follows:

1. *Intellectual property rights* are the lawful rights of organizations, individuals to their intellectual property, including copyrights and copyright - related rights, industrial property rights and rights to plant varieties.

2. *Copyrights* are the lawful rights of organizations, individuals to works created or owned by them.

3. *Copyright - related rights* (hereinafter referred to as related rights) are the rights of organizations, individuals to performances, phonograms, broadcasting programs, satellite signals carrying encrypted program.

4. *Industrial property rights* are the lawful rights of organizations, individuals to inventions; industrial designs; layout-designs of semi-conductor integrated circuits; trademarks; trade names, geographical indications, business secrets created or owned by them and rights to repression of unfair competition.

5. *Rights to plant varieties* are the rights of organizations, individuals who directly carry out, or invest in, the creation of or discover and develop new plant varieties.

6. *Intellectual property right holder* is the owner of the intellectual property right or an organization, individual that is assigned the right by the owner.

7. *Work* is every production created in the literary, artistic and scientific domain, whatever may be the mode or form of its expression.

8. *Original work* is a work used to create derivative works.

9. *Derivative work* is a work translated from one language to another, adapted, modified, transformed, compiled, annotated and selected work.

10. *Published work* is a work communicated to the public in whatever mode or form under authorization of its author or copyright owner.

11. To *reproduce* means the making of one or more copies of a work or a phonogram in whatever mode or form, including permanent or provisional backup of the work in electronic form.

12. *Invention* is a technical solution, in form of a product or a process, to resolve a specific problem by utilizing laws of nature.

13. *Industrial design* is appearance of a product expressed in shapes, lines, dimensions, colors or any combination thereof.

14. *Layout-design of a semiconductor integrated circuit* (hereinafter referred to as "layout-design") is a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.

15. *Semiconductor integrated circuit* is a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".

16. *Trademark* is any sign used to distinguish goods or services of different organizations and individuals.

17. *Collective mark* is a mark used to distinguish goods or services of members from those of non-members of an organization that is the owner of the mark.

18. *Certification mark* is a mark licensed by its owner to other organizations, individuals to use for their goods or services in order to certify characteristics in respect of origin, materials, and methods of goods production or methods of services supply, quality, accuracy, safety or other characteristics of such goods or services.

19. *Associated marks* are marks that are registered by the same owner, identical or similar to each other and are used for identical or similar or inter-related goods and services.

20. *Well-known mark* is a mark widely known throughout territory of Vietnam.

21. *Trade name* is a designation of an organization or individual used in business to distinguish the business entity bearing such designation from other business entities acting in the same field and area of business.

    The area of business provided for in this paragraph shall be the geographical area where business entity has business partners, clients or reputation.

intellectual property objects which are contrary to the social morality, public order or harmful to national defense and security.

2. To encourage and promote creation activities, exploitation intellectual property assets to contribute to the socio-economic development and to improve people's material and spiritual life.

3. To provide financial assistance to assignment, exploitation intellectual property rights for the social interests; to encourage national and foreign organizations, individuals in financing creation activities and intellectual property rights protection.

4. To give priority to investment in training, improving officials, civil servants, related people in the field of intellectual property rights protection and research, application of science and technologies for intellectual property rights protection.

Article 9. Rights and responsibilities of organizations, individuals in protection of intellectual property rights

Any organizations, individuals shall have the rights and responsibilities to take appropriate measures permitted by law in order to protect their own intellectual property rights and must respect intellectual property rights of others in accordance with this Law and other applicable provisions of law.

Article 10. Contents of the state administration of intellectual property

1. Promulgation and organization of the implementation of legal instruments on intellectual property;

2. Formulation and direction of the implementation of strategies of and policies on intellectual property rights protection;

3. Organization of the intellectual property administration mechanism;

4. Grant and implementation of other procedures concerning to Copyright Registration Certificates, Related right Registration Certificates, Protection Titles of Industrial Property Objects, Plant Variety Protection Titles;

5. Supervision, inspection and control the observance of intellectual property legislation; resolution intellectual property disputes, appeals and

denunciations; and dealing with of intellectual property legislation;

6. Organization activities of the information and statistics on intellectual property;

7. Organization, guidelines for and management of activities of assessment in the field of intellectual property;

8. Training, education, propagation, popularization of knowledge of and law on intellectual property;

9. International cooperation on intellectual property.

Article 11. Responsibilities of the state administration of intellectual property

1. The Government shall exercises centrally the state administration of intellectual property.

2. Ministry of Science and Technology shall be responsible to the Government for taking lead and coordinating with Ministry of Culture and Information, Ministry of Agriculture and Rural Development in the carrying out of state administration of intellectual property and directly carry out the state administration of industrial property rights.

The ministry of Culture and Information, within its responsibility and competence, shall directly carry out state administration of copyrights and related rights.

The ministry of Agriculture and Rural Development, within its responsibility and competence, shall directly carry out State administration of rights in plant varieties.

3. Ministries, authorities of ministerial-level or subordinated to the Government, within its responsibility and competence, shall be responsible for coordinating with the ministry of Science and Technology, the ministry of Culture and Information, the ministry of Agriculture and Rural Development and the People's Committee of provinces, cities under the central government in carrying out state administration of intellectual property.

4. The People's Committee at all level shall carry out State administration of intellectual property at the local areas within its competence.

5. The Government shall regulate on competence and responsibility for state administration of intellectual property of the ministry of Science and Technology, the

ministry of Culture and Information, the ministry of Agriculture and Rural Development and the People's Committee at all level.

Article 12. Intellectual property fees and charges

Organizations and individuals must pay fees and charges when conducting intellectual property related procedures in accordance with this Law and other provisions of legislation.

Part two

COPYRIGHTS AND RELATED RIGHTS

Chapter I

PROTECTION CONDITIONS OF COPYRIGHTS AND RELATED RIGHTS
Protection conditions of copyrights and related rights

and other works expressed in forms of letters or other writing characters;

b) Lectures, presentations and other speeches;

c) Journalistic works;

d) Musical works;

d’) Dramatic works;

e) Cinematographic works and works created by similar methods (hereinafter referred to as cinematographic works);

g) Fine art works and applied art works;

h) Photographic works;

i) Architectural works;

k) Graphics, sketches, maps, drawings relevant to topography and scientific works;

l) Folk artistic and literary works.

2. Derivative works shall only be protected according to paragraph 1 of this Article if they do not infringe the copyrights of original works.

3. Protected works provided for in paragraphs 1 and 2 of this Article must be created directly by author’s intelligence without being reproduced from others’ works.

4. The Government sets out guidelines in details forms of protected works as provided for in paragraph 1 of this Article.

Article 15.

rights

1. Actors, singers, musicians, dancers and others who perform literary and artistic works (hereinafter referred to as performers);

2. Organizations, individuals that are owners of the performances provided for in Article 43 of this Law.

3. Organizations, individuals that make fixation of sounds, images of a performance for the first time or other sounds and images (hereinafter referred to as producers of phonograms).

4. Organizations that take the initiative of and have responsibility for the broadcast of sounds, images or reentxationotheeofs, icludsine broadcassine

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a) Broadcast, satellite signal carrying encrypted program of an organization with Vietnamese nationality;

b) Broadcast, satellite signal carrying encrypted program of the organization protected in accordance with international treaties to which Vietnam is party.

4. Performances, phonograms and broadcasts and satellite signals carrying encrypted program shall only be protected as provided for in paragraph 1, 2, 3 of this Article provided that they do not influence the copyrights exercise.

a) To create the derivative work;

b) To perform the work to the public;

c) To reproduce the work;

d) To circulate to the public the original or copies of the work;

d') To communicate to the public by wire or wireless means, through electronic information network or by any other technical means;

e) To lease the original or copies of a cinematographic work or a computer program.

2. Organizations, individuals who exploit or use one, several or all of the rights provided for in paragraph 1 of this Article and paragraph 3 of Article 19 must ask for permission from the copyright owners and pay them with royalties, remuneration and other material benefits.

Article 21. Copyrights to cinematographic works and dramatic works

1. In respect of cinematographic works, persons who are directors, editors, cameramen, stage managers, composers, art-designers, sound-men, lighting-men, studio artists, studio-instrument managers, high-tech makers and others related to creating cinematographic works shall have the rights as provided for in Article 19.1, 2, 4 of this Law and other rights as agreed.

   In respect of dramatic works, persons who are directors, editors, composers, art-designers, sound-men, lighting-men, stage artists, stage-instrument managers, high-tech makers and others related to creating dramatic works shall have the rights as provided for in Article 19.1, 2, 4 of this Law and other rights as agreed.

2. Organizations and individuals who invest finance and other material conditions in making cinematographic works and dramatic works shall be the rights owners provided for in Article 19.3 and Article 20 of this Law.

3. Organizations and individuals provided for in Paragraph 2 of this Article shall have the obligations to pay royalties, remuneration determined by agreement with persons provided for in Paragraph 1 of this Article.

Article 22. Copyrights to computer programs and compilations

c) Quoting from a work without alteration of their contents for use in articles, periodic journals, radio and television programs and documentary films;

d) Quoting from a work without alteration of the contents for teaching and testing activities in schools, not for commercial purposes;

d') Copying a work for archives in libraries for the purposes of research;

e) Performing dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns at public places without any form of charges and payment of remuneration and other material benefits to performers;

g) Directly recording and reporting performances for public information and educational purposes;

h) Taking pictures of or televising works of fine art, photographic, and applied art that have already been publicly displayed for introduction purposes;

i) Translating a work into Braille or the like;

k) Importing copies of others' works for personal use only.

2. Persons and legal persons who use the works as provided for in Paragraph 1 of this Article shall not make any affect to normal exploitation of the works or any infringement to the rights of the authors or copyright owners; they must to acknowledge name of the authors and origins of works.

3. Any use of works as provided for in paragraph 1 of this Article is not applicable to architectural, fine art works or computer programs.

Article 25. Use of published works without obtaining permission but paying royalties, remuneration

1. The forms of use of published works without obtaining permission but paying of royalties and remuneration include plays of songs, music, and poems for purposes of broadcast.

2. Organizations and individuals when using the works provided for in paragraph 1 of this Article must not prejudice to the personal rights provided for in Article 19 of this Law.

Article 26. Terms of copyrights protection

1. Personal rights provided for in Article 19.1, 19.2, 19.4 of this Law shall be protected indefinitely.

2. Personal rights provided for in Article 19.3 and property rights provided for in Article 20 of this Law shall be protected with the following terms:

   a) In respect of cinematographic works, photographic works, dramatic works, applied art works, anonymous works, the term of protection shall be 50 years from their first publications. If within 50 years from the fixation, cinematographic work, dramatic works have not been published, the term of protection shall be 50 years from the fixation date of the work. When information relating to authors of an anonymous work is available, the term of protection shall be counted as provided for in paragraph 2.a of this Article;

   b) In respect of other works, the term of protection shall be during the life of the author and for 50 years from the year of his or her death. In respect of works created by co-authors, the term of protection shall be ended at the 50th year after the year of death of the last surviving co-author.

   c) Terms of protection provided for in paragraph 2.a, 2.b, and 2.c of this Article shall be ended at 24 o'clock of the date of 31 December of the year when the protection term ends.

Article 27. Copyrights infringement

Copyrights infringement shall include the following acts:

1. Seizing copyrights of a literary, artistic, scientific work;

2. Assuming the author's name of a work;

3. Publishing, producing and disseminating a work without its author's permission;

4. Publishing, producing and disseminating a co-author work without permission of other co-author(s);

5. Garbling, modifying or distorting a work by any means and in any forms, which is prejudicial to the author's honor and prestige;

6. Copying a work without permission of the author or the copyrights owner, except forms of use of works provided for in subparagraphs a and d' paragraph 1 Article 24 of this Law;

7. Exploiting of a work to make derivative work without permission of the author or the copyrights owner of the original work, except forms of use of works provided for in subparagraphs i paragraph 1 Article 24 of this Law;

8. Exploiting a work of without permission of copyrights owner, without paying royalties and remuneration and other material benefits under the law; except forms of in

paragraph

her performances in any way or any form that would be prejudicial to his or her honor and prestige;

3. Property rights include the exclusive right to carry out or to authorize any of the followings:

a) Fix his or her live performance in phonograms;

b) Directly or indirectly reproduce a fixation of his or her performance;

c) Broadcast and communicate to the public his or her unfixed performance, except where such performance for broadcasting purposes.

d) Distribute to the public a fixation of his or her performance or copies thereof by sale, rental, or any other technical means accessible to the public.

4. Organizations and individuals when exploiting and using the rights provided for in paragraph 3 of this Article shall have the obligation to pay remuneration to performers as stipulated by law or as agreement.

Article 29. Rights of producers of phonograms

1. The producer of a phonogram shall have the exclusive right to carry out or authorize any of the following acts:

a) Directly or indirectly reproduce his or her phonogram;

b) Distribute to the public the original or copies of the phonogram by sale, rental or any other technical means accessible to the public;

2. The producer of a phonogram shall have the right to get material benefits when his or her phonogram is distributed to the public.

Article 30. Rights of Broadcasting Organizations

1. A broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:

a) Broadcast or rebroadcast its broadcast

b) Distribute to the public its broadcast

c) Fix its broadcast

d) Reproduce a fixation of its broadcast

2. A broadcasting organization shall have the right to get material benefits when their broadcasting programs are recorded, broadcasted and distributed to the public.

Article 31. Use of related rights without obtaining permission and paying remuneration

1. The following forms of use of related rights shall not require obtaining permission and paying remuneration:

a) Duplication by oneself of a single copy of works for the purpose of personal scientific research;

b) Duplication by oneself of a single copy of works for the purpose of teaching activities, except when phonograms, or broadcasting programs have been

program shall be protected during the term of 50 years following the year of broadcast of the program.

4. Terms of protection provided for in paragraphs 1, 2 and 3 of this Article shall end at 24 o'clock of 31 December of the year when term of related rights protection ends.

Article 34. Related Rights Infringement

1. Abrogating the rights of performers, producers of phonograms, broadcasting organizations;

2. Assuming the names of performers, producers of phonograms, broadcasting organizations;

3. Publishing, producing and communicating to the public fixed performances, phonograms, broadcasts without the permission of performers, producers of phonograms, broadcasting organizations;

4. Mutilating, distorting or modifying performances, phonograms, broadcasts in any ways, any forms, which prejudice to honor and prestige of performers, producers of phonograms, broadcasting organizations;

5. Reproducing, extracting fixed performances, phonograms, broadcasts without the permission of performers, producers of phonograms, broadcasting organizations;

6. Removing or altering any electronic right management information without permission of the related right owner

7. Intentionally canceling or invalidating technical methods applied by the related right owner to protect his or her related rights.

8. Distributing, importing for distribution, broadcasting, communicating to the public performances, fixed copies of performances or phonograms when knowing or having basis to know that the electronic right management information has been removed or altered without permission of the related right owner;

9. Producing, assembling, transforming, distributing, importing, exporting, selling or renting of an equipment or system when knowing or having basis to know that such equipment or system is mainly used for illegal decoding a satellite signal carrying encrypted program;

10. Intentional recording or disseminating continuously of a satellite signal carrying encrypted program if the signal is decoded without permission of the lawful distributors.

Chapter III

COPYRIGHTS OWNERS AND RELATED RIGHTS OWNERS

Article 35. Copyrights Owner

Copyrights owners are organizations, individuals that own part or whole of the exclusive rights as provided for in Article 20 of this Law.

Article 36. Copyrights Owner is an author

Author who creates his work by using his own time, materials, finance and other material conditions shall have the personal rights as provided for in Article 19 and property rights as provided for in Article 20 of this Law.

Article 37. Copyrights Owner is a co-author

1. Co-author who co-creates a work by using his own time, materials, finance and other material conditions shall have the personal rights as provided for in Article 19 and property rights as provided for in Article 20 of this Law.

2. Where the work created by co-authors mentioned in Paragraph 1 of this Article, consists of different parts, each of which can be used separately from others, the co-authors shall have the personal rights as provided for in Article 19 and property rights as provided for in Article 20 of this Law over such separate part.

Article 38. Copyrights Owner is an organization, or individual that assigns a duty to or contract with an author.

1. An organization that assigns a duty of creating a work to an author, who is its employee, shall be the owner of the property rights as provided for in Article 20 of this Law and owner of the right to publish the work as provided for in paragraph 3 Article 19 of this Law.

2. An organization, individual that contract with an author who creates a work, shall be the owner of part or all property rights as provided for in Article 20 and paragraph 3 Article 19 of this Law, unless otherwise agreed.

Article 39. Copyrights Owner is an heir

An Organization, individual that is heir of copyright in accordance with law on inheritance and other relevant legal provisions shall be the owner of the rights as provided for in Articles 20 and paragraph 3 Article 19 of this Law.

Article 40. Copyrights Owner is a copyrights assignee

An organization, individual that is an assignee of a part or whole of the rights as provided for in Article 20 and paragraph 3 Article 19 of this Law shall be the copyrights owner under the assignment contract.

Article 41. Copyright owner is the State

1. The following works shall be stated-owned works:

   a) Posthumous works;

   b) Works, which are being protected during their protection terms, of which the owners of property rights died without any heir(s), or with heir(s) who have waived, or has no, the right to such works.

   c) Works of which owner rights are assigned to the State by the copyrights owner.

2. The Government shall provide specific provisions on the use of stated-owned works.

Article 42. Works of public domain

1. Works, of which the protection terms have expired as provided for in Article 26 of this Law, is of public domain.

2. All organizations, individuals have the right to use works provided for in paragraph 1 of this Article with the respect for personal rights of the authors as provided for in Article 19 of this Law.

3. The Government shall provide specific provisions on the use of works of public domain.

Article 43. Related right owners

1. Performers are the owners of their performances, unless otherwise agreed with related parties.

2. Organizations, individuals that use their own time, materials, finance and other material conditions to make a performance shall be the owners of that performance, unless otherwise agreed with related party.

3. Organizations or individuals that that uses their own time, materials, finance and other material conditions to

make a phonogram shall be the owner of that phonogram, unless otherwise agreed with related party.

4. Broadcasting organization is the owner of its broadcasting program, unless otherwise agreed with related party.

Chapter IV

ASSIGNMENT OF COPYRIGHTS, RELATED RIGHTS

Section 1. Assignment of copyrights, related rights

Article 44. General provisions on Assignment of copyrights, related rights

1. Assignment of copyrights, related rights is the assignment of owner rights provided for in paragraph 3 of Article 19, Article paragraph 3 of Article 28 and Articles 20, 29, 30 of this Law by copyrights and related rights owners to other organizations, individuals under a contract or under relevant legislation.

2. Authors are not allowed to assign personal rights provided for in Article 19, except the right to publication provided for in paragraph 3 of Article 19; performers are not allowed to assign personal rights provided for in paragraph 2 Article 28 of this Law.

3. Assignment of copyrights, related rights in respect of works, performances, phonograms, broadcasting program, encrypted program-carrying satellite signals created by co-owners must have the agreement of all co- owners. Where the mentioned works consist of different parts, each of which can be used separately from others, the copyrights, related rights owner shall have the right to assign his or her copyrights, related rights over his or her part to other organizations, individuals.

Article 45. Contract for copyrights/related rights assignment.

1. A contract for copyrights/related rights assignment includes the following main contents:

   a) Full name and address of assignor and assignee;

   b) Grounds of assignment;

b) Grounds of assignment;

c) Scope of right use;

d) Price and mode of payment;

d') Rights and obligations of each party;

e) Obligations for breach of contract.

2. The implementation, amendment, cancellation assignment contract of copyrights, related rights shall apply regulations of the Civil Code.

Article 48. Cancellation and invalidation of contracts for using copyrights or related rights

One party shall have the right to unilaterally cancel or suspend a contract for using copyrights or related rights and request the other party to pay damages when that party seriously breaches the contractual undertakings.

Chapter V

REGISTRATION CERTIFICATION OF COPYRIGHTS AND RELATED RIGHTS

Article 49. Registration of copyrights and related rights

1. The registration of copyrights, related rights means an author or copyrights, related rights owner files an application and attached documents (hereinafter referred to as application) with the competent state authorities to attest the information of author, work, copyrights and related rights owner.

2. Filing application for copyrights/related rights registration certificate is not a mandatory procedure for the entitlement to the copyright and related in accordance with this Law.

3. Organizations, individuals granted a copyrights/related rights registration certificate shall not be obliged to prove their copyrights, related rights upon a dispute, except where an opposition proof is given.

Article 50. Application for registration of copyrights/related rights

1. Authors, owners of copyrights, related rights shall have the right to directly or authorize other persons or

to issue, re-issue, change and restore the Copyright Registration Certificates, and Related Rights Registration Certificates.

2. The Ministry of Culture and Information shall set out forms of Certificate of Registration for copyrights and related rights.

Article 52. Time limit for issuing copyrights/related rights registration certificates

Within 15 working days from the date of receipt of sufficient application, the State management authority in charge of copyrights and related rights shall be responsible for granting the Copyright Registration Certificate or Related Rights Registration Certificate to the relevant applicant. In case of refusing to grant the Copyright Registration Certificate or Related Rights Registration Certificate, this authority shall reply the applicant in writing.

Article 53. Validity of copyrights/related rights registration certificate

1. Copyright Registration Certificates or Related Rights Registration Certificates shall be effective in the whole territory of Vietnam.

2. Copyright Registration Certificates or Related Rights Registration Certificates issued by the State management authority in charge of copyrights and related rights before this Law comes into full force shall have its validity maintained.

Article 54. Register and publication of copyrights, related rights

1. Copyright Registration Certificates or Related Rights Registration Certificates shall be recorded in the National Register of Copyrights, Related rights.

2. Decision to issue, re-issue, change, restore or declaration on the cancellation of validity of Copyright Registration Certificates or Related Rights Registration Certificates must be published in the Official Gazette in respect of Copyrights, Related rights.

Article 55. Cancellation the validity of Copyright Registration Certificate, Related Rights Registration Certificate

1. The State management authority in charge of copyrights and related rights that grants Copyright Registration Certificate, Related Rights Registration Certificate

shall have the right to cancel the validity of such registration certificates if it is discovered that an individual who is granted registration certificate of copyrights, related rights is not the author, copyrights, related rights owner or not the protected subject matter.

2. Any organization or individual who discovers that the grant of a Copyright Registration Certificate or Related Rights Registration Certificate is contrary to the provisions of this Law shall be entitled to request the state management authority in charge of copyrights, related rights to cancel the validity of such certificate.

Chapter VI

REPRESENTATIVE, CONSULTANCY AND SERVICE ORGANIZATIONS IN THE FIELDS OF COPYRIGHTS, RELATED RIGHTS

Article 56. Collective management organizations of copyrights and related rights

1. Collective management organizations of copyrights and related rights are non-profit organizations protecting copyrights and related rights, established on the basis of agreement among authors, copyrights, related rights owners, operates in accordance with the law.

2. Collective management organizations of copyrights and related rights are authorized by authors, copyrights, related rights owners to exercise the main rights and obligations as follows:

   a) To manage copyrights and related rights; to negotiate on licensing, seizing and dividing royalties, remuneration and other material benefits there from the allowance of exploiting the authorized rights;

   b) To protect member’s rights and legal benefits, to reconcile any dispute.

3. Beside the rights and obligations provided for in paragraph 2 of this Article, collective management organizations of copyrights and related rights have the rights and obligations as follows:

   a) To establish encouraging creation activities and other social activities;

b) To cooperate with correlative international and national organizations on the protection of copyrights and related rights;

c) To make scheduled and unscheduled report on collective management to competent authorities;

d) Other rights and obligations according to the provisions of the law.

Article 57. Consultancy and service organizations of copyrights and related rights

1. Consultancy and service organizations of copyrights and related rights are established and operated in accordance with the law

2. Authors, copyrights owners, related right owners may empower to a consultancy and service organization of copyrights and related rights to carry out services relating to their rights and benefits in accordance with law.

3. Consultancy and service organizations of copyrights and related rights have the following rights and obligations:

a) To do consultancy work of issues relating to the law on copyrights and related rights;

b) To carry out application procedures for registration certificate of copyrights, related rights under the authorization on behalf of copyrights, related right owners;

c) To join other legal relations on copyrights, related rights, the protection of lawful rights of authors, copyrights owners and related rights owners under the authorization;

d) To make scheduled and unscheduled report on collective management to competent state authorities.

Part Three

INDUSTRIAL PROPERTY RIGHTS

Chapter VII

REQUIREMENTS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

Section 1. Protection requirements for inventions

Article 58. General requirements for inventions eligible for protection

1. An invention shall be eligible for protection by granting of an Invention Patent if it fulfills the following conditions:

   a) To be novel;

   b) To involve an inventive step;

   c) To be susceptible of industrial application.

2. Unless it is common knowledge an invention shall be eligible for protection by granting of a Utility solution Patent if it fulfills the following conditions:

   a) To be novel;

   b) To be susceptible of industrial application.

Article 59. Subject matters not protected as inventions

The following subject matters shall not be protected as inventions:

1. Discoveries, scientific theories; mathematical methods;
2. Schemes, plans, rules or methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;
3. Presentations of information;
4. Solutions of aesthetic characteristics only;
5. Plant varieties, animal varieties;
6. Processes of essentially biological nature for the production of plants and animals other than microbiological processes;
7. Disease prevention, diagnostic and treatment methods for human or animals.

Article 60. Novelty of inventions

1. An invention shall be considered as novel if it is not identical with any technical solution already publicly disclosed, inside or outside the country, by means of a written or oral description, by use or in any other way,

before the filing date or the priority date, as applicable, of the invention registration application.

2. An invention shall be considered as not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

3. An invention shall not be considered as lacking of novelty if it was published in the following circumstances, provided that the invention registration application is filed within 6 months from the date of publication or exhibition:

   a) It was published by another person without permission of the person having the right to registration as provided for in Article 86 of this Law;

   b)

An industrial design shall be eligible for protection if it fulfills the following conditions:

1. To be new;

2. To be creative;

3. To be susceptible of industrial application.

Article 64. Subject matters not protected as industrial designs

The following subject matters shall not be protected as industrial designs:

1. Appearance of a product that is dictated by its technical features of the product;

2. Appearance of a civil or an industrial construction work;

3. Appearance of a product that is invisible during use of the product.

Article 65. Novelty of industrial designs

1. An industrial design shall be considered as new if it significantly differs from other industrial designs that are already disclosed inside or outside the country by way of use or description in writing or in any other forms prior to the filing date or the priority date, as applicable, of the industrial design registration application.

2. Two industrial designs shall not be considered as significantly different from each other if they are only different in features which are not easily noticeable and memorable and which cannot serve to distinguish these industrial designs as whole.

3. An industrial design shall be considered as not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

4. An industrial design shall not be considered as lacking of novelty if it was published in the following circumstances, provided that the industrial design registration application is filed within 6 months from the date of publication or exhibition:

   a) It was published by another person without permission of the person having the right to registration as provided for in Article 86 of this Law;

b) It was published in the form of a scientific presentation by the person having the right to registration as provided for in Article 86 of this Law;

c) It was exhibited at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to registration as provided for in Article 86 of this Law.

Article 66. Creativity of industrial designs

An industrial design shall be considered as creative if it cannot be easily created by a person with ordinary skill in the art.

Article 67. Susceptibility of industrial application of industrial designs

An industrial design shall be considered as susceptible of industrial application if it can serve as a model for mass production, by industrial or handicraft methods, of the product with appearance embodying the industrial design.

Section 3. Protection requirements for layout-designs

Article 68. General requirements for layout-designs eligible for protection

A layout-design shall be eligible for protection if it fulfills the following conditions:

1. To be original;

2. To be commercially novel.

Article 69. Subject matters not protected as layout-designs

The following subject matters shall not be protected as layout-designs:

1. Principles, processes, systems or methods operated by semiconductor integrated circuits;

2. Information or software contained in semiconductor integrated circuits.

Article 70. Originality of layout designs

1. A layout-design shall be considered as original if it fulfills the following conditions:

a) To result from its author's own creative effort;

b) Not to be widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation.

2. A layout-design that consists of combination of elements and interconnections that are commonplace shall be considered to be original only if the combination, taken as the whole, is original as prescribed in paragraph 1 of this Article.

Article 71. Commercial novelty of layout-designs

1. A layout-design shall be considered as commercially novel if prior to the filing date of the application for registration it has not been commercially exploited anywhere in the world.

2. A layout-design shall not be considered as lacking of commercial novelty if the layout-design registration application is filed within 2 years from the date such layout-design was commercially exploited for the first time anywhere in the world by the person who has the right to registration provided for in Article 86 of this Law or his or her licensee.

3. Commercial exploitation of a layout-design means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of the layout-design, or an article incorporating such a semiconductor integrated circuit.

Section 4. Protection requirements for marks

Article 72. General requirements for marks eligible for protection

Unless it falls within any cases provided for in Article 73 of this Law, a mark shall be eligible for protection if it fulfills the following conditions:

1. To be a visible sign in the form of letters, words, pictures, figures, including three-dimensional figures or a combination thereof, represented in one or more colors;

2. To be capable of distinguishing goods or services of the mark owner from those of others.

Article 73. Signs not protected as marks

The following signs shall not be protected as marks:

distinctiveness through use before the filing of mark registration applications;

d) Signs describing the legal status and activity field of businesses;

d') Signs indicating the geographical origin of the goods or services, except for signs having been widely used and recognized as a mark or signs registered as collective marks or certification marks as provided for in this Law;

e) Signs identical with or confusingly similar to another person's mark being protected in respect of identical or similar goods or services;

g) Signs identical with or confusingly similar to a mark in respect of identical or similar goods or services claimed in another person's mark registration application having earlier filing date or earlier priority date, as applicable (including applications filed under international treaties to which Vietnam is party);

h) Signs identical with or confusingly similar to another person's mark having been widely used and recognized in respect of the similar or identical goods or services;

i) Signs identical with or confusingly similar to another person's mark already registered in respect of identical or similar goods or services the Mark registration Certificate of which has been terminated for no more than 5 years, except where the ground for such termination is non-use of the mark as provided for in subparagraph d paragraph 1 Article 95 of this Law;

k) Signs identical with or confusingly similar to another person's mark recognized as well-known in respect of the goods or services that are identical with or similar to those bearing the well-known mark; or in respect of dissimilar goods or services if the use of such marks may prejudice the distinctiveness of the well-known mark or the registration of such signs is aimed at taking advantage of goodwill from the well-known mark;

l) Signs identical with or similar to another person's trade name having been used if the use of such signs is likely to cause confusion to consumers as to the source of goods or services;

m) Signs identical with or confusingly similar to geographical indications having been protected;

n) Signs identical with or insignificantly different from another person's industrial design having been protected on the basis of an industrial design registration application with filing date or priority date earlier than those of the mark registration application.

Article 75. Criteria for recognition of a well-known mark

The following criteria shall be taken into account while considering well-known status of a mark:

1. The number of the related consumers who are aware of the mark through purchase or use of the goods or services bearing the mark or through advertising;

2. Territorial scope of circulation of the goods or services bearing the mark;

3. Turn-over of the sale or supply of the goods or services bearing the mark or the volume of the goods sold or the services supplied;

4. The period of continuous use of the mark;

5. Widespread goodwill of the goods or services bearing the mark;

6. Number of the countries granting protection to the mark;

7. Number of the countries recognizing the mark as well known;

8. Value of the mark in assignment, licensing, investment capital contribution.

Section 5. Protection requirements for trade names

Article 76. General requirements for trade names eligible for protection

A trade name shall be eligible for protection if it is capable of distinguishing the business entity bearing such trade name from other business entities acting in the same field and locality of business.

Article 77. Subject matters not protected as trade names

Designations of State agencies, political organizations, socio-political organizations, social organizations, socio-

professional organizations or those entities who are not erand noames.

3. Geographical indications identical with or confusingly similar to a mark having been protected prior to the filing date of geographical indication registration application if their use may significantly jeopardize goodwill or reputation acquired through use of such a mark;

4. Geographical indications misleading consumers as to the true geographical origin of goods bearing such geographical indications.

Article 81. Reputation, quality and characteristics of products having geographical indications

1. Reputation of the product having a geographical indication shall be determined on the basis of trust consumers have in the product through the extent of wideness to which it is known and selected by consumers.

2. Quality and characteristics of the product having a geographical indication shall be defined by one or several qualitative, quantitative or physical, chemical, microbiological perceptible norms which shall be testable by technical means or experts with appropriate testing methods.

Article 82. Geographical conditions relevant to geographical indications

1. Geographical conditions relevant to a geographical indication shall include natural and human factors attributable to the reputation, quality and characteristics of the product having the geographical indication.

2. Natural factors consist of those of climate, hydrograph, geology, terrain, ecological system and other natural conditions.

3. Human factors consist of skills and expertise of producers, and such traditional production process of the locality.

Article 83. Geographical area corresponding to geographical indications

The geographical area corresponding to a geographical indication shall be accurately determined by words and a map.

Section 7. Protection requirements for business secrets

Article 84. General requirements for business secrets eligible for protection

A business secret shall be eligible for protection if it fulfills the following requirements:

1. Neither to be common knowledge nor easily obtained;
2. To be capable, when being used in the business course, to render advantages to its holder over those who do not hold or use it;
3. To be kept secret by its owner with necessary measures so that it shall neither be disclosed nor easily accessible.

Article 85. Subject matters not protected as business secrets

The following confidential information shall not be protected as business secrets:

1. Personal status secrets
2. State management secrets.
3. Security and national defense secrets.
4. Other confidential secret information irrelevant to business.

Chapter VIII

ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS IN RESPECT OF INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS

Section 1. Registration of inventions, industrial designs, layout designs, marks and geographical indications

Article 86. The right to registration of an invention, industrial design and layout-design

1. The following organizations and individuals shall have the right to registration of an invention, industrial design and layout-design:

a) The authors who have created the invention, industrial design or layout design by his or her own efforts and expenses; or

b) The organizations or individuals who have invested funds and material facilities to the authors in the form of a job assignment or job hiring unless otherwise agreed by the parties and such agreements are not contrary to paragraph 2 of this Article.

2. The Government shall provide for the right to registration of inventions, industrial designs and layout-designs created by using funds and material facilities from the State budget.

3. In case more than one organizations or individuals have jointly created or invested in the creation of an invention, industrial design or layout-design, those organizations or individuals shall jointly share the right to registration and such right shall only be exercised with their consensus.

4. A person who has the right to registration as provided in this Article may assign that right to other organizations or individuals in the form of a written contract, passing by inheritance in accordance with the law, even when a registration application has been filed.

Article 87. Right to registration of a mark

1. An organization or individual shall have the right to registration of a mark to be used for goods or services he or she produced or supplied.

2. An organization or individual legally engaged in the trade in a product produced by a third party shall have the right to registration of a mark to be used for the product, provided for the producer neither uses such a mark for the product nor objects to such registration.

3. A collective organization legally established shall have the right to registration of a collective mark to be used by its members in accordance with the rules on using collective mark.

With regard to a sign indicating the geographical origin of goods or services, the organization that has the right to registration as referred to above shall be the collective of organizations or individuals engaged in the production or trade of goods or services in the relevant locality.

4. An organization with the function to control and certify the quality, characteristics, origin or other relevant

insignificantly different from each other, or for the same marks in respect of identical goods or services, the Protection Titles may only be granted with respect to the first valid application. The first valid application shall be the one that satisfies all the requirements as to form and contents provided for in Section 2 of this Chapter and has the filing date or priority date earlier than all other valid applications.

2. Where two or more applications are regarded as first valid applications, a Protection Title may only be granted with respect to a single application in accordance with the agreement of all applicants. Without such an agreement, the granting of a protection title in respect of those applications shall be refused.

Article 91. Principle of priority

1. The applicant for registration of an invention, an industrial design or a mark may claim priority on the basis of the first application for protection of the same subject matter if the following conditions are fully satisfied:

   a) The first application has been filed in Vietnam or a member country of an international treaty having provisions on priority rights to which Vietnam is a party, or a country having agreed with Vietnam to apply such provisions;

   b) The applicant is a national of Vietnam or such a country referred to in subparagraph a of this paragraph, or is a resident of or has an industrial or commercial establishment in Vietnam or such a country referred to in subparagraph a of this paragraph;

   c) The claim for the right of priority was clearly mentioned in the application and a copy of the first application certified by its receiving office;

   d) The industrial property registration application in Vietnam has been filed within the time limit provided for in the international treaty to which Vietnam is party.

2. In a single invention, industrial design or mark application, the applicant may claim multiple priorities based on different earlier applications, provided that the corresponding contents of such earlier applications and the application are indicated.

b) The end of 10 years counted from the date the layout-designs were first commercially exploited anywhere in the world by the person having the right to registration or his or her licensee;

c) The end of 15 years counted from the date of creation of the layout-designs.

7. Mark registration Certificates shall have validity beginning on the granting date and expiring at the end of 10 years counted from the filing date and renewable indefinitely for consecutive terms of 10 years.

8. Geographical indication registration Certificates shall have indefinite validity beginning on the grant date.

Article 94. Maintenance and renewal of validity of Protection Titles

1. In order to have validity of an Invention Patent or Utility Solution Patent maintained, its owner shall pay maintenance fees.

2. In order to have validity of an Industrial Design Patent or a Mark registration Certificate renewed, its owner shall pay renewal fees.

3. Rates of fees and procedures for maintenance and renewal of Protection Titles shall be provided for by the Government.

Article 95. Termination of validity of Protection Titles

1. The validity of a Protection Title shall be terminated in the following cases:

a) Its owner has not paid the due fees for the maintenance or renewal as prescribed;

b) Its owner has declared to relinquish the rights conferred by the Protection Title;

c) Its owner has no longer existed or the owner of a Mark registration Certificate has no longer engaged in business without a lawful successor;

d) The mark has not been used by its owner or his licensee without justifiable reasons for 5 consecutive years prior to a request for termination of validity, except the use is commenced or resumed at least 3 months before the request for termination;

d') The owner of a Mark registration Certificate in respect of a collective mark fails to supervise or

ineffectively supervises the implementation of the rules on using collective mark;

e) The owner of a Mark registration Certificate in respect of a certification mark violates the rules on using certification mark or fails to supervise or ineffectively supervises the implementation of such rules;

g) The geographical conditions attributable to the reputation, quality or characteristics of the product bearing a geographical indication have changed resulting in a loss of the reputation, quality or characteristics of the product.

2. Where the owner of a Protection Title fails to pay maintenance fees before the prescribed time limit, upon the expiry of such time limit, validity of the Protection Title shall ex-officio terminates from the first day of the year for which the maintenance fees have not been paid and the state administrative authority of industrial property shall record such termination in the National Register of Industrial Property and publish it in the Industrial Property Official Gazette.

3. Where the owner of a Protection Title has declared to relinquish industrial property rights as provided for in subparagraph b of paragraph 1 of this Article, the state administrative authority of industrial property shall decide to terminate the validity of the Protection Title from the date of receipt of the owner’s declaration;

4. Any organizations or individuals shall have the right to request the state administrative authority of industrial property to terminate the validity of a Protection Title in cases provided for in subparagraphs c, d, d’ e and g of paragraph 2 of this Article, provided that the prescribed fees shall be paid.

Based on the result of the examination of request for termination of validity of a Protection Title and interested parties’ opinions, the state administrative authority of industrial property shall make either a decision or a notice of refusal to terminate the validity of the Protection Title.

5. Provisions in paragraphs 1, 3 and 4 of this Article shall also be applied to the termination of validity of international registrations of marks.

Article 96. Invalidation of Protection Titles

1. A Protection Title shall be entirely invalidated in the following cases:

   a) The applicant for registration neither has right to registration nor has been assigned such right (with regard to inventions, industrial designs, layout-designs and marks);

   b) The subject matter of industrial property failed to satisfy the protection conditions at the grant date of the Protection Title.

2. A Protection Title shall be partly invalidated if that part failed to satisfy the protection conditions.

3. Any organizations or individuals shall be entitled to request the state administrative authority of industrial property to invalidate a Protection Title in cases provided for in paragraphs 1 and 2 of this Article, provided that the prescribed fees shall be paid.

   The time period for making request for invalidation of a Protection Title shall be its whole term of protection. With regard to marks, such time limit shall be 5 years counted from the grant date, except for the case where the Protection Title has been granted due to the applicant’s dishonesty.

4. Based on the result of the examination of request for invalidation of a Protection Title and interested parties’ opinions, the state administrative authority of industrial property shall make either a decision or a notice of refusal to entirely or partly invalidate the Protection Title.

5. Provisions in paragraphs 1, 2, 3 and 4 of this Article shall also be applied to the invalidation of international registrations of marks.

Article 97. Amendments to Protection Titles

1. The owner of a Protection Title shall be entitled to request the state administrative authority of industrial property to make amendments to the following information in the Protection Title, provided that the prescribed fees shall be paid:

   a) Changes, error corrections in relation to the name, address of the author or the owner;

   b) Amendments to the description of characteristics, quality or geographical area in relation to a geographical indication; Amendments to the rules on using a collective mark or a certification mark.

2. At the request the owner of a Protection Title, the state administrative authority of industrial property shall be responsible for correction of the error caused at its fault in the Protection Title. In such a case, the owner of a Protection Title is not liable for payment of fees.

3. The owner of a Protection Title shall be entitled to request the state administrative authority of industrial property to narrow the scope of industrial property rights. In such a case, the respective industrial property registration application shall be reexamined as to substance and the person making such a request shall pay the fees for substantive examination.

Article 98. National register for industrial property

1. National register for industrial property is a document recording industrial property rights to inventions, industrial designs, layout designs, marks and geographical indications established under this Law as well as any relevant changes or transfers.

2. Decisions on the grant of protection titles, main contents of protection titles and decisions on the amendments to, termination or invalidation of Protection Titles, decisions on certification of registration of industrial property right transfer contracts shall all be recorded in the National register for industrial property.

3. National register for industrial property shall be set up and kept by the state administrative authority of industrial property.

Article 99. Publication of decisions relating to Protection Titles

Any decisions relating to the grant, amendment, termination, invalidation, transfer of Protection Titles for industrial property rights shall be published by the state administrative authority of industrial property in the Industrial property Official Gazette within 60 days counted from the date of decision.

Section 2. Industrial property registration applications

Article 100. General requirements for industrial property registration applications

1. An industrial property registration application shall consist of the following documents:

   a) A request, made in prescribed form;

   b) Documents, samples, information identifying the

respect of a group of inventions that are closely linked to form a single common inventive idea.

3. Each industrial design registration application may request for one Industrial Design Patent in respect of:

a) A set of articles, i.e. a set of two or more articles that express a single common inventive idea and that are used together or for a single purpose;

b) An industrial design accompanied by one or more other variants of that industrial design, i.e. variations of the industrial design that express a single common inventive idea and that are not significantly different

387 requesation may

applications

1. Documents identifying an industrial design claimed for protection in an industrial design registration application shall contain a Specification of industrial design (consisting of a Description of industrial design and a Scope of protection of industrial design) and a set of photos or drawings of industrial design.

2. The Description of industrial design shall fulfill the following conditions:

   a) To fully disclose features that express the nature of the industrial design and specify features that are new, different from the least different known industrial design, and be consistent with the photos or drawings;

   b) Where the industrial design registration application consists of variants, the Description shall fully specify these variants and clearly define distinctions between the principal variant and the other variants;

   c) Where the industrial design in the registration application is of a set of products, the Description shall fully specify features of each product of the set.

3. The Scope of protection of industrial design shall specify features claimed for protection, including features that are new, different from similar known industrial designs.

4. The set of photos, drawings shall fully specify features of the industrial design.

Article 104. Requirements for layout-design registration applications

Documents, materials and information identifying the layout-design claimed for protection in a layout-design registration application shall include:

1. Drawings, photos of the layout-design;

2. Information on functions and structure of semiconductor integrated circuits produced by incorporation of the layout design;

3. Samples of a semiconductor integrated circuit produced by incorporation of that layout-design (where the layout design has been commercially exploited).

Article 105. Requirements for mark registration applications

1. Documents, samples, information identifying the mark claimed for protection in a mark registration application shall include:

   a) Samples of the mark and list of goods or services bearing the mark;

   b) Rules on using collective mark or Rules on using certification mark.

2. The sample of mark shall be described in order to clarify elements of the mark and the comprehensive meaning of the mark (if any). Where the mark consists of words or phrases of hieroglyphic languages, they shall be transliterated; where the mark consists of signs in foreign languages, they shall be translated into Vietnamese.

3. Goods or services listed in a mark registration application shall be classified in accordance with the International Classification of Goods and Services under the Nice Agreement, published by the state administrative authority of industrial property.

4. The rule on using collective mark shall consist of the following essential contents:

   a) Designation, address, grounds of establishment and operations of the collective organization that is the owner of the mark;

   b) Conditions for using the mark;

   c) Conditions to become a member of the collective organization;

   d) Remedies applicable to acts violating the rules on using the collective mark;

   d’) List of organizations and individuals permitted to use the mark (if any).

5. The rules on using certification mark shall consist of the following essential contents:

   a) The organization or individual who is the mark owner;

   b) Conditions for using the mark;

   c) Characteristics of goods and services certified by the mark;

   d) Methods of evaluation of the characteristics of goods and services and methods of supervision of the use of the mark;

d’) Expenses (if any) payable by the mark user for the certification and protection of the mark.

Article 106. Requirements for geographical indication applications

industrial property right related procedures

1. The investment with authority to carry out procedures in relation to the establishment, maintenance, amendments, termination and invalidation of Protection Titles shall be made in written form, called as a power of attorney.

2. A power of attorney shall include the following essential contents:

   a) Full name and address of the principal;

   b) Full name and address of the attorney;

   c) Scope of authority, including the tasks to be carried out by the attorney on behalf of the principal;

   d) Date of the power of attorney;

   d') Validity term of the power of attorney;

   e) Signature and seal (if any) of the person executing the power of attorney;

3. A power of attorney with no validity term shall be considered as valid indefinitely and shall be terminated only when the principal so declares.

Section 3. Procedures for processing industrial property registration applications and granting Protection Titles

Article 108. Receiving industrial property registration applications; Filing date

1. An industrial property registration application shall only be received by State administrative authority of industrial property if it consists of at least the following documents and information:

   a) A request for registration of invention, industrial

applications); Descriptions of the peculiar characteristics (for geographical indication registration applications);

c) Receipt of prescribed fees and charges.

2. The filing date shall be the date on which the industrial property registration application is received by5( )-e3.48 36r7s2 800.4803 Tm00.48 30o2d0Ihril p the dat

objection to such intended refusal as provided for in subparagraph a of this paragraph;

c) To serve a notice of the refusal to grant a Layout-design of semiconductor integrated circuit registration Certificate in case of an integrated circuit registration application;

d) To carry out the procedures provided for in paragraph 4 of this Article if the applicant has successfully overcome defects or has justifiably objected the intended refusal as provided for in subparagraph a of this paragraph.

4. Where an industrial property registration application does not fall under the cases provided for in paragraph 2 of this Article, or where it falls under subparagraph d of paragraph 3 of this Article, the state administrative authority of industrial property shall serve a notice of the acceptance of a formally valid application or, in case of a layout-design application, grant a Protection Title and enter into register as provided for in Article 118 of this Law.

5. A mark registration application refused under paragraph 3 of this Article shall be considered as never filed, except where it serves as the basis for a claim for right of priority.

Article 110. Publication of industrial property registration applications

1. An industrial property registration application shall be published by the state administrative authority of industrial property in the Industrial Property Official Gazette in accordance with the provisions of this Article.

2. An invention registration application already accepted as formally valid shall be published in the 19th month as from the filing date or the priority date as applicable, or as earlier as requested by the applicant.

3. An industrial design registration application, a mark registration application or a geographical indication registration application shall be published within 2 months as from the date the application is accepted as formally valid.

4. A formally valid layout-design registration application shall be published by way of allowing direct access (without reproduction) at the state administrative authority of industrial property. With regard to such

confidential information contained in an application as provided for by the Government, such access shall be permitted only to authorities and parties related to the procedures for invalidation of Protection Title or procedures for dealing with infringements of right.

The basic information on a layout-design registration application and the Protection Title for a layout-design shall be published within 2 months as from the grant date of Protection Title.

Article 111. Keeping secrecy of invention registration applications, industrial design registration applications before publication

2. The time limit for making request for substantive examination of an invention registration application with request for a Utility Solution Patent shall be 36 months as from the filing date or from the priority date, as applicable.

3. Where there was no request for substantive examination filed within the time limit provided for in paragraphs 1

d') To convert an invention registration application with request for an Invention Patent into that with request for a Utility Solution Patent and vice versa.

2. The person who requests for the procedures provided for in paragraph 1 of this Article shall pay prescribed fees and charges.

3. Any amendment or supplement to an industrial property registration application must not expand the scope of the subject matter disclosed or specified in the application and must not change the substance of the subject matter claimed for registration in the application and shall ensure the unity of the application.

4. In case of division of an application, the filing date of the divided application shall be determined as that of the original application.

Article 116. Withdrawal of industrial property registration applications

1. Until the state administrative authority of industrial property makes a notice of refusal of or a decision on the grant of a Protection Title, the applicant shall be entitled to declare the withdrawal of the industrial property registration application in written form in his or her own name or through an industrial property representative agency provided that the investment of authority for withdrawal of the application is expressly stated in the power of attorney.

2. At the moment an applicant declare the withdrawal of the registration application, all further procedures related to the application shall be suspended; fees and charges already paid in relation to the procedures that have not been yet commenced shall be refunded to the applicant at his or her request.

3. Any registration application for an invention or industrial design already withdrawn or considered as withdrawn before publication and any mark registration application already withdrawn shall be considered as never filed, except where it serves as the basis for a claim for right of priority.

Article 117. Refusal to grant Protection Titles

1. The grant of a Protection Title shall be refused in respect of an application for an invention, an industrial design, a mark or a geographical indication in the following cases:

a) There are grounds to confirm that the respective subject matter claimed in the application does not fulfill the protection requirements;

b) The invention claimed in the application is identical with the invention disclosed in another person's application with earlier filing date or earlier priority date.

c) The industrial design claimed in the application is identical with or is not significantly different from the industrial design described in another person's application with earlier filing date or earlier priority date.

d) The mark claimed in the application is identical with or confusingly similar to the mark claimed in another person's mark registration application having earlier filing date or earlier date of priority with respect to identical or similar goods or services (including mark registration applications filed under an international treaty to which Vietnam is party).

2. Any application with earlier filing date or earlier priority date referred to in subparagraphs b, c and d paragraph 1 of this Article shall only include those applications that do not fall under the case provided for in subparagraph a paragraph 1 of this Article.

3. The grant of a Protection Title shall be refused in respect of a layout-design registration application that does not fulfill the formality requirements as provided for in Article 109 of this Law.

4. Where an industrial property registration application falls under paragraph 1 and 3 of this Article, the state administrative authority of industrial property shall carry out the following procedures:

   a) To serve a notice of an intended refusal to grant a Protection Title, in which the reasons shall be clearly stated and a time limit for the applicant to oppose to such intended refusal shall be fixed;

   b) To serve a notice of the refusal to grant a Protection Title if the applicant fails to submits objection or submit unjustifiable objection to such intended refusal as provided for in subparagraph a of this paragraph;

   c) To carry out the procedures for granting a Protection Title and making an entry into Register in accordance with provisions of Article 118 of this Law

if the applicant submits justifiable objection to such intended refusal as provided for in subparagraph a of this paragraph.

5. A mark registration application refused under paragraph 1 of this Article shall be considered as never filed, except where it serves as the basis for a claim for right of priority.

Article 118. Grant of Protection Titles; Entry into Register

Where an industrial property registration application does not fall under paragraphs 1 and 2 or and subparagraph b of paragraph 4 of Article 117 of this Law and the applicant has paid prescribed fees, the state administrative authority of industrial property shall carry out the following procedures:

1. To make decision on the grant of a Protection Title and make an entry into the National Register for Industrial Property;

2. To issue the Protection Title to the applicant.

Article 119. Objection to grant or refusal to grant Protection Titles; re-examination of industrial property registration applications

1. An applicant and any third party shall be entitled to object to a decision on, or a refusal of, the grant of a Protection Title.

2. Where a decision on, or a refusal of, the grant of a Protection Title is objected, the relevant industrial property registration application shall be re-examined in respect of what is objected.

3. The appeal of a decision on, or a refusal of, the grant of a Protection Title, the issuance of which is in the contrary to the law shall be made in accordance with the law on appeals and denunciations.

Article 120. Time limit for processing industrial property registration applications

1. An industrial property registration application shall be examined as to form within 1 month from the filing date.

2. An industrial property registration application shall be examined as to substance within the following time limits:

a) 12 months from the date of publication or the date of request for substantive examination of the application

that is the grantee a Protection Title of the industrial property object by the competent authority.

2. The owner of a trade name shall be the organization or individual that legally uses it in the course of business.

3. The owner of a business secret shall be the organizations or individuals that has legally acquired the information constituting the business secret and keep it secret. A business secret acquired by an employee or a contract party during performance of assigned duties shall belong to the employer or the duty assignor, unless otherwise agreed by the parties.

4. The owner of geographical indications is the State.

Article 123. Authors of inventions, industrial designs and layout designs and their rights

1. The author of an invention, industrial design or layout design shall be the person who has directly created the industrial property object. Where more than one person together have directly created the industrial property object they shall be co-owners.

2. Personal rights of the author of an invention, industrial design or layout design comprise of the following:

a) To be named as the author in the relevant Invention Patent, Utility Solution Patent, Industrial design Patent and Layout design registration Certificate;

b) To be named as the author in the documents in which the invention, industrial design or layout design is published or introduced.

3. Property right of the author of an invention, industrial design or layout design is the right to remuneration in accordance with Article 136 of this Law.

Article 124. Rights of owners of industrial property objects

The owner of an industrial property object shall have the following property rights:

1. To use or permit others to use the industrial property object in accordance with Article 125 and Chapter X of this Law;

2. To prevent others from using the industrial property object in accordance with Article 126 of this Law;

3. To dispose off the industrial property object in accordance with Chapter X of this Law.

Article 125. Use of industrial property objects

1.

a) Applying the business secret to manufacture products, supply services or trade in goods;

b) Selling, advertising for sale, storing for sale and importing a product obtained by applying the business secret.

5. The use of a mark means the conduct of the following acts:

a) Affixing the protected mark to goods, packages of goods, means of supplying services and communicating papers in business activities;

b) Circulating, or offering, advertising, storing for sale of, goods bearing the protected mark;

c) Importing goods or services bearing the protected mark.

6. The use of a trade name means the conduct of any acts for commercial purposes by using it to name oneself in business activities, expressing it in transaction documents, shop-signs, products, goods, and packages of goods and means of service and advertisements.

7. The use of a geographical indication means the conduct of the following acts:

a) Affixing the protected geographical indication to goods or packages of goods;

b) Circulating, or offering, advertising, storing for sale of, goods bearing the protected geographical indication;

c) Importing goods bearing the protected geographical indication.

Article 126. Right to prevent others from using industrial property objects

1. The owner of an invention, industrial design, layout design, business secret, mark, trade name or geographical indication shall have the right to prevent others from using the respective object of his or her ownership unless such use falls under cases provided for in paragraph 2 or 3 of this Article.

2. The owner of an industrial property object shall not have the right to prevent others from conducting the following acts:

a) Using the invention, industrial design or layout design for personal needs or non-commercial purposes, or for

The following acts shall be regarded as an infringement of the rights of the owner of an invention, industrial design or layout design:

1. Using the protected invention, using the protected industrial design or another industrial design insufficiently different from it, or using the protected layout design or any original part of it, within the validity term of the Protection Title without permission of the owner;

2. Using the invention, industrial design or layout design without paying compensation in accordance with the provisions on provisional right as provided for in Article 132 of this Law.

Article 128. Acts of infringing the rights to business secrets

1. The following acts shall be considered as an infringement of the rights to a business secret:

a) Accessing or acquiring information embodied in a business secret by taking acts against secret-keeping measures taken by the lawful controller of the business secret;

b) Disclosing or using information embodied in a business secret without permission of the owner the business secret;

c) Breaching secret-keeping contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of persons in charge of secret-keeping in order to access, acquire or disclose a business secret;

d) Accessing to or acquiring information embodied in a business secret, that is submitted by another person under procedures for granting a license of business or marketing in respect of a product, by actions against secret-keeping measures taken by competent agencies;

d’) Using or disclosing business secret, while knowing or being obliged to know that it has been acquired by another person engaged in one of the acts referred to in subparagraphs a through d of this paragraph;

e) Failure to perform the obligation of secret keeping provided for in Article 129 of this Law.

2. The lawful controller of a business secret referred to in paragraph 1 of this Article shall include the owner, his or her lawful licensee or manager of the business secret.

Article 129. Obligation to keep secrecy of the test data

1. Where the laws require an applicant for a license of business or marketing in respect of pharmaceutical products or agricultural chemical products to submit test data or any other data being business secrets, the origination of which involves a considerable efforts or expenses, and where the applicant requests that such data to be kept secret, the authority shall have obligation to take necessary measures so that such data are neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.

2. From the submission of the secret data in an application to the authority as provided for in paragraph 1 of this Article to the end of 5-year period counted from the date on which a license is granted to the applicant, the authority shall not grant such a license to any subsequent applicant in whose application the secret data are used, except where the subsequent applicant have legally obtained them.

Article 130. Acts of infringing the rights to marks, trade names and geographical indications

1. The following acts if performed without permission of the mark owner shall be considered as infringement of the rights to the mark:

   a) Using signs identical with a protected mark for goods or services identical with those in the list registered with the mark;

   b) Using signs identical with a protected mark for goods or services similar or related to those in the list registered with the mark if such use is likely to cause confusion as to the origin of the goods or services;

   c) Using signs similar to a protected mark for the goods or services identical with, similar or related to those in the list registered with the mark, if such use is likely to cause confusion as to the origin of the goods or services;

   d) Using signs identical with or similar to a well-known mark, or signs in the form of translation or transliteration of a well-known mark, for any goods or services, including those dissimilar or unrelated to the good or service having the well-known mark, if such use is likely to cause confusion as to the origin of the goods or services or wrong impression as to the relationship between the user of such signs and the well-known mark owner.

2. Any act of using commercial indications identical with or similar to another person's trade name having been used before for the same or similar goods or services that causes confusion as to business entities, business premises or business activities under the trade name shall be considered as infringement of the rights to the trade name.

3. The following acts shall be considered as infringement of the rights to a protected geographical indication:

   a) Using the geographical indication for products that do not satisfy the peculiar characteristics and quality of the product having the geographical indication;

   b) Using the geographical indication for products similar to the product having the geographical indication for the purposes of taking advantage of its reputation and goodwill;

   c) Using a sign identical with or similar to the geographical indication that may cause wrong impression as to the geographical origin of goods;

   d) Using a geographical indications of wines or spirits for the protected product that are not originating in the territories corresponding to the geographical indication, even where the true origin of goods is indicated or the geographical indication is used in translation or accompanied by such words as "kind", "type", "style", "imitation" or the like.

Article 131. Acts of unfair competition

1. The following acts shall be acts of unfair competition:

   a) Using commercial indications that cause confusion as to business entities or business activities or commercial source of goods or services;

   b) Using commercial indications that cause confusion as to the origin, production method, feature, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods and services;

   c) Using commercial indications identical with or confusingly similar to a mark being protected in a country which is party to the Paris Convention or another international treaty to which Vietnam is a party which provides for the application of Article 6 septies of the Paris Convention where within one year backwards from the date of such use the user was a representative or agent of the mark owner in Vietnam

and such use was neither consented to by the mark owner nor justified;

d) Registering or possessing the right to use or using a domain name identical with or confusingly similar to a protected trade name or mark under another person's ownership, or a geographical indication that one does not have the right to use, for the purpose of possessing the domain name, benefiting from or prejudicing reputation and goodwill of the respective mark, trade name and geographical indication.

2. The commercial indications referred to in paragraph 1 of this Article mean signs, information serving as guidelines to trade of goods and services, including marks, trade names, business symbols, business slogans, geographical indications, package designs, label designs, etc.

3. Use of commercial indications referred to in paragraph 1 of this Article shall include any act of affixing such commercial indications on goods, packaging, service means, business transaction documents and advertising means; selling, advertising for sale, storing for sale and importing goods affixed with such commercial indications.

Article 132. Provisional rights to inventions, industrial designs and layout designs

1. If the applicant for registration of an invention or industrial design knows that the invention or industrial design is being used by another person for commercial purposes without prior use right, the applicant shall have the right to serve a written notice of his or her application filing which specifies the filing date and the date on which the invention or industrial design is published in the Industrial Property Official Gazette to such user so that the later shall decide either to terminate such use or to be subject to later payment of remuneration in accordance with paragraph 3 of this Article.

2 With respect to a layout-design which has, before the grant date of Layout-design of semiconductor integrated circuit registration Certificate, been commercially exploited by the person having the right to registration or his licensee, in case the person having the right to registration knows that such layout-design is being used by another person for commercial purposes, he or she may serve a written notice of his or her right to registration to such user so that the later shall decide

either to terminate such use or to be subject to later payment of remuneration in accordance with paragraph 3 of this Article.

3. In case the person having been notified as provided for in paragraphs 1 and 2 keeps using such invention, industrial design or layout design, if an Invention Patent, a Utility solution Patent, an Industrial Design Patent or a Layout-design of semiconductor integrated circuit registration Certificate is granted, the owner of such invention, industrial design or layout design shall have the right to request such user of the invention, industrial design or layout design to pay a remuneration equivalent to the fees for licensing such invention, industrial design or layout design within the relevant scope and period of use.

Section 2. Limitations of industrial property rights

Article 133. Factors limiting industrial property rights

Under this Law, industrial property rights may be limited by the following factors:

1. Rights of prior users to the invention or industrial design.

2. Obligations of the owners including the obligation to pay remuneration to the authors of inventions, industrial designs or layout designs; the obligation to use the inventions or marks and to grant licenses of inventions under decisions of State authorities.

Article 134. Rights to use inventions on behalf of the state

1. Ministries and ministerial-level authorities shall have the right to, on behalf of the State, use or allow other organizations or individuals to use inventions in the field under their respective management for public non-commercial purposes, national defense, national security, disease prevention and treatment for people and to meet other urgent social needs without having to obtain permission of the invention owner or his licensee under an exclusive contract.

2. The use of an invention under paragraph 1 of this Article shall be limited to the scope and conditions of licensing provided for in paragraph 1 of Article 146 of this Law,

Article 135. Prior use right to inventions and industrial designs

1. If any person who has, before the publication date of an invention or industrial design, made use of or made necessary preparation for use of an invention or industrial design identical with the protected invention or industrial design, then after a Protection Title is granted such person (hereinafter referred to as prior use right holder) shall be, without having to obtain permission of or paying compensation to the owner of the protected invention or industrial design, entitled to continue such use within the same scope and volume of use or preparation made before the publication date. Such prior use of invention or industrial design shall not be regarded as an infringement of the right to such objects.

2. The holder of prior use right to an invention or industrial design shall not be entitled to transfer such right to others, except where such right is transferred together with the business or production premise where such the use or preparation for use of the invention or industrial design was made. The hold of prior use right cannot expand the scope and volume of use unless it is so permitted by the owner of the invention or industrial design.

Article 136. Obligation to pay remuneration to authors of inventions, industrial designs and layout designs

1. Unless otherwise agreed between the owner and the author of an invention or industrial design or layout design, the owner shall have the obligation to pay remuneration to the author in accordance with paragraphs 2 and 3 of this Article.

2. The minimum rate of remuneration payable by the owner of an invention, industrial design or layout design to the author shall be as provided for below:

   a) 10% of the revenue gained from the use of the invention or industrial design or layout design;

   b) 15% of the total amount of money received by the owner on each payment upon the granting of a license of the invention or industrial design or layout design.

3. Where an invention, industrial design or layout design is created by more than one author, the remuneration rate provided for in paragraph 2 of this Article shall be applicable to all authors together. The authors shall settle by themselves the allocation of such remuneration paid by the owner.

license of the principle invention as provided for in Article 147 of this Law.

Article 139. Limitations of rights to geographical indications

The following acts shall not be considered as infringement of rights to geographical indications:

1. Circulating products bearing a geographical indication put into market by the person having the right to use it;

2. Using a mark identical with or similar to a geographical indication where the mark has been registered or used in good faith prior to the date of entry into force of this Law or before the geographical indication is protected in its country of origin (in respect of foreign geographical indications);

3. Using a sign identical with or similar to a geographical

property rights

1. An industrial property owner shall only assign his or her right within the scope of protection.
2. The rights to a geographical indication shall not be assigned.
3. The rights to a trade name shall only be assigned together with the transfer of the entire business premise and business activities under the trade name.
4. The assignment of the rights to a mark shall not cause confusion as to characteristics or origin of the goods or services having the mark.
5. The rights to a mark shall only be assigned to the organizations or individuals who fulfill all requirements for the person having the right to registration in respect of that mark.

Article 142. Contents of contracts for assignment of industrial property rights

A contract for assignment of industrial property right shall have the following substantial provisions:

1. Full name and address of the assignor and the assignee;
2. Bases of assignment;
3. Price for assignment;
4. Rights and obligations of the assignor and the assignee.

Section 2. Licensing of industrial property objects

Article 143. General provisions on licensing of industrial property objects

1. Licensing of an industrial property object means the permission of the industrial property owner given to another organization or individual to use the industrial property object within the scope of the owner’s use right.
2. The licensing of an industrial property object shall be conducted in the form of written contract (hereinafter referred to as license contract for use of industrial property object).

Article 144. Restrictions to licensing of industrial

property objects

1. The use a geographical indication or a trade name shall not be licensed.

2. The use of a collective mark shall not be licensed to organizations or individuals other than members of the collective mark owner.

3. The licensee shall not enter into a sub-license contract with a third party without permission of the licensor.

4. A mark licensee shall have the obligation to indicate on goods and packaging thereof that the goods have been produced under a contract for use of mark.

Article 145. Types of license contracts for use of industrial property objects

License contracts for use of industrial property object may be of the following types:

1. Exclusive license contract means a contract under which, within scope and term of license, the licensee has an exclusive right to use the industrial property object while the licensor can neither conclude any license contracts for use of industrial property object with any third party nor, without permission of the licensee, use the industrial property object;

2. Non-exclusive license contract means a contract under which, within scope and term of licensing, the licensor still has the rights both to use the industrial property object and also to conclude non-exclusive contracts with others.

3. Sub-license contract for use of an industrial property object means a contract the licensor of which is a licensee of the industrial property object under another contract.

Article 146. Contents of license contracts for use of industrial property objects

1. A license contract for use of industrial property object shall have the following substantial provisions:

   a) Full name and address of the licensor and the licensee;

   b) Bases of the license;

   c) Scope of the license (limitations of use; territorial limitations); term of license; type of license;

   d) Price for the license;

d') Rights and obligations of the licensor and the licensee.

2. A license contract for use of industrial property object shall not have such provisions that unreasonably restrict the right of the licensee, particularly those provisions not deriving from the rights of the licensor, including the following:

   a) Prohibiting the licensee to improve the industrial property object other than marks; compelling the licensee to grant a free license or to assign to the licensor the right to industrial property registration or an industrial property right in respect of such improvements;

   b) Directly or indirectly restricting the licensee to export goods produced or services supplied under the license contract for use of industrial property object to the territories where the licensor neither hold the respective industrial property right nor has the exclusive right to import such goods;

   c) Compelling the licensee to buy all or a given percentage of materials, components or equipments from the licensor or the persons designated by the licensor without aiming at ensuring the quality of goods produced or services supplied under the licensee;

   d) Prohibiting the licensee from contesting validity of the industrial property right or the right to license.

3. The provisions provided for in paragraph 2 of this Article, if incorporated in a contract upon agreement of the parties, shall be invalid ex-officio.

Section 3. Compulsory licensing of inventions

Article 147. Bases of compulsory licensing of inventions

1. The owner of an invention or his exclusive licensee (hereinafter together referred to as the holder of exclusive right to use invention) shall be compelled to permit another organization or individual to use the invention by a decision of a state competent authority as provided for in Article 149 of this Law in the following cases:

   a) Where the holder of exclusive right to use invention fails to fulfill the obligation of using such invention

remedy against an anti-competitive act under competition law;

c) The licensee shall not assign such right of use, except with the assignment of his or her business premise, or not grant a sub-license to others;

d) The licensee shall pay the holder of exclusive right to use invention adequate remuneration in circumstances of each case, taking into account the economic value of such right of use, in compliance with the remuneration frame provided for by the Government;

d') The holder of exclusive right to use invention has the right to request for termination of such right of use when the bases of compulsory licensing provided for in Article 186 cease to exist and are unlikely to recur, provided that such termination shall not prejudicial to the licensee.

2. In addition to those conditions provided for in paragraph 1 of this Article, the licensing for use of an invention in case provided for in paragraph 1 of Article paragraph 3 of this Article 147 shall also meet the following additional conditions:

a) The holder of exclusive right to use invention pertaining to the first patent shall also be licensed for use of invention pertaining to the second patent on reasonable terms; and

b) The licensee of the invention pertaining to the first patent shall not assign, except with the assignment of the whole right of invention pertaining to the second patent.

Article 149. Competency and procedures for licensing of inventions by decision of the state authority

1. The Minister of Science and Technology shall make a decision on compulsory licensing for use of invention based on the consideration of a request for such a license in cases provided for in subparagraph a, b and c paragraph 1 Article 147 of this Law.

   Ministries, ministerial-level authorities shall, based on the consultation with the Minister of Science and Technology, make such a decision in the field under their respective management in the occurrence of circumstances provided for in subparagraph d paragraph 1 of Article 147 of this Law.

2. A decision on compulsory licensing shall provide for appropriate scope and conditions of use in accordance with Article 148 of this Law.

3. The state authority having decided on compulsory licensing shall promptly inform the holder of exclusive right to use invention about the decision.

4. A decision on compulsory licensing and a decision on refusal of compulsory licensing shall be subject to an administrative appeal or a judicial litigation in accordance with the laws.

5. The Government shall provide detailed regulations on procedures for compulsory licensing for use of invention by decision of the state authority.

Section 4. Registration of contracts for transfer of industrial property rights

Article 150. Effect of contracts for transfer of industrial property right

1. A contract for assignment of industrial property right shall only be effective upon registration with the state administration authority of industrial property.

2. A licensing contract for use of industrial property object shall only be effective to a third party upon registration with the state administration authority of industrial property.

3. Validity of a licensing contract for use of industrial property object shall be terminated ex-officio upon the termination of licensor’s industrial property right.

Article 151. Dossier for registration of contracts for transfer of industrial property right

A dossier for registration of a licensing contract for use of industrial property object or a contract for assignment of industrial property right shall comprise the following:

a)

d) Co-owners' written consent and a written explanation of the reason for disagreement of the rest co- owners, if any (if the relevant industrial property right is under co-ownership);

d') Receipt of prescribed fees and charges;

e) Power of attorney, if the dossier is filed through a representative.

Article 152. Processing dossiers for registration contracts for transfer of industrial property right

The Government shall promulgate detailed provisions on procedures for receiving and processing dossiers for registration of contracts for transfer of industrial property rights.

Chapter XI

INDUSTRIAL PROPERTY REPRESENTATIVE

Article 153. Industrial property representation service

1. Industrial property representative means an organization conducting business of industrial property representation service (hereinafter referred to as the industrial property agency) and individual practicing industrial property representation service of such organization (hereinafter referred to as the industrial property agent).

2. Industrial property representation service includes the following types:

a) Representing organizations, individuals before the state authorities having competence in establishment and enforcement of industrial property rights;

b) Making advice on issues concerning procedures for establishment and enforcement of industrial property rights;

c) Other services concerning procedures for establishment and enforcement of industrial property rights.

Article 154. Power of industrial property representatives

1. An industrial property agency shall only be entitled to provide services within the scope of authorization and to

re-authorize another industrial property agency only with a written consent of the authorizing party.

2. An industrial property agency shall be entitled to waive its industrial property representation business after having legally transferred all pending works to another industrial property agency.

3. An industrial property agency shall not perform the following activities:

a) Simultaneously representing parties in conflict of industrial property rights;

b) Withdrawing an application for Protection Title, declaring relinquishment of protection or withdrawing an appeal against the establishment of industrial property rights without consent of the authorizing party;

c) Deceiving or forcing clients to conclude and implement contracts for industrial property representation services.

Article 155. Responsibilities of industrial property representatives

1. An industrial property representative shall have the following responsibilities:

a) To clearly notify items and rates of national fees and charges concerning procedures for establishment and enforcement of industrial property rights, items and rates of service charges under a list registered at the state administrative authority of industrial property;

b) To keep confidential all information and documents relating to a case of one’s representation;

c) To truthfully and completely inform the represented party about all notifications, requirements of the state authority of establishment and enforcement of industrial property rights; to deliver in time the protection title and other decisions;

d) To protect interests of the represented party by satisfying in time all requirements for the represented

2. An industrial property agency shall have civil liabilities for representative activities performed by its industrial property agent on behalf of the agency.

Article 156. Conditions for conducting industrial property representative service business

An organization that fulfills the following conditions shall be entitled to conduct business of industrial property representation service as an industrial property agency:

1. To be an enterprise, a law firm, or a scientific and technological service organization established and operating legally;

2. To have a function of conducting business of industrial property representation service, which is recorded in a certificate of business registration, or a certificate of operation registration (hereinafter referred to as the certificate of business registration);

3. The head of the organization or a person authorized by the head shall fulfill conditions for industrial property agents provided for in paragraph 1 Article 157 of this Law.

Article 157. Conditions for practicing as an industrial property agent

1. An individual who fulfills the following conditions shall be entitled to practice industrial property representation service:

   a) To be granted a Practicing certificate of industrial property agent;

   b) Working for one industrial property agency.

2. An individual who fulfills the following conditions shall be granted a certificate of practicing industrial property representation service:

   a) To be a Vietnamese citizen, having full capacity for civil acts;

   b) To reside permanently in Vietnam;

   c) To have a university degree;

   d) To have directly worked in legislation of industrial property for at least 5 consecutive years; or have been directly worked in examination of industrial property applications at a national or international industrial property office for at least 5 consecutive years; or have a certificate of graduation from a training course

on industrial property laws and regulations recognized by an authority;

d') Not to be an official or a public servant working for state administrative authorities of establishment and enforcement of industrial property rights;

e) To pass an examination on industrial property representative profession organized by an authority.

2. The Government shall provide detailed regulations on the program of training on industrial property laws and regulations, the examination of industrial property representative profession, and the grant of a certification of practicing industrial property representation service.

Article 158. Recordation, deletion of names of industrial property agencies, revocation of Practicing certificates of industrial property agent

1. Organizations or individuals that fulfill conditions for conducting or practicing industrial property representation service provided for in the Article 156 or Article 157 of this Law respectively shall be, at their request, recorded in the National Register of industrial property representatives and published in the Industrial Property Official Gazette by the state administrative authority of industrial property.

2. In case where there is ground to know that an industrial property representative no longer fulfills conditions for conducting or practicing provided for in the Article 156 or Article 157 of this Law, the state administrative authority of industrial property shall delete the name of such industrial property representative from the National Register of industrial property representatives and publish the fact in the Industrial Property Official Gazette.

3. An industrial property agency violating provisions of paragraph 3 Articles 154 and 155 of this Law shall be subject to administrative sanctions or criminal liability in accordance with the laws and regulations, and compensate damages, if any;

4. An industrial property agent making profession mistakes while practicing or violating provisions of subparagraph c paragraph 3 Article 154 and subparagraph a paragraph 1 Article 155 of this Law shall, depending on essence and gravity of the violation, be subject to a warning, a monetary fine or revocation of practicing certificate of industrial property agent.

1. A plant variety shall be considered as distinct if it is clearly distinguishable in one or more major characteristics from any other variety of common knowledge at the application filing date.

2. The plant varieties of common knowledge provided for in paragraph 1 of this Article shall include any variety falling under one of the following cases:

   a) Its propagating materials or harvested products have been widely used in the market of any country at the time of filing of the registration application;

   b) It has been protected or registered into the List of plant varieties in any country.

   c) It is the subject of an application for protection or for registration into the List of plant varieties in any country provided that such application is not refused.

   d) It description was published.

Article 163. Uniformity of plant varieties

A plant variety shall be considered as uniform if in its cultivation process there is the same expression of the major characteristics except for permitted variation for certain characteristic.

Article 164. Stability of plant varieties

A plant variety shall be considered as stable if its major characteristics retain the same expression as originally described, and remain unchanged after each crop and at the end of each cultivation cycle.

Article 165. Denomination of plant varieties

1. A domination of a plant variety shall be considered as proper if it is easily distinguishable from those of all other varieties of common knowledge in the same or similar species.

2. A denomination of the following kinds shall not be considered as proper:

   a) Consisting of numerals only;

   b) Violating social morality;

   c) Being very likely to cause confusion as to the features or characteristics of the plant variety;

d) Being very likely to cause confusion as to identification of the breeder;

d')Being identical with, or confusingly similar, to a mark, trade name or geographical indication already protected before the publication date of an application for protection of the plant variety;

e) Being identical with, or similar to, the harvested product of the plant variety bearing such denomination.

g) Affecting prior rights of another organization or individual.

3. Any organization or individual that offers for sale or puts into the market propagating materials of a plant variety must use its denomination as recorded in the Plant variety Protection Title even after the expiry of the protection term.

Chapter XIII

ESTABLISHMENT OF PLANT VARIETY RIGHTS

Section 1. Establishment of plant variety rights

Article 166. Registration of plant variety rights

1. To enjoy protection of plant variety rights, an organizations or individuals must carry out the registration for protection.

2. The persons who have the right to registration for protection of a plant variety shall include:

a) The breeders who have invested in breeding, discovering and developing the plant variety;

b) The organizations or individuals who have invested in breeding, discovering and developing the plant variety in the form of a job assignment or job hiring unless otherwise agreed in a contract.

c) The assignee or the heir of the right to registration for protection of the plant variety.

3. Where organizations or individuals used funds of the state or from a state-owned project, the rights in plant varieties shall belong to the State. The Government shall

provide detailed regulations on the exercise of the right to registration of such plant varieties.

Article 167. Modes of filing application for establishment of plant variety rights

Organizations and individuals of Vietnam, foreign individuals permanently residing in Vietnam and foreign organizations and individuals having a production or trading establishment in Vietnam may file applications for establishment of plant variety rights (hereinafter referred to as protection registration applications) either directly or though a lawful representative in Vietnam.

Article 168. First-to-file principle for plant varieties

1. Where two or more persons independently file applications for protection on different dates of the same plant variety, the Protection Certificate may only be granted to the first applicant.

2. Where two or more applications are filed for the same plant variety on the same date, the Protection Certificate may only be granted to the person filing an application in accordance with the agreement of all the applicants. In case the applicants fail to reach such an agreement, the state administrative authority of plant variety shall grant a Protection Certificate based on determination of the person who, bred or discovered and developed, the plant variety first.

Article 169. Priority principle for protection registration applications

1. The applicant may claim for priority in one of the following cases:

   a) The protection registration application is filed within 12 months from the filing date of the first application for protection of the same plant variety in Vietnam or in country having concluded with Vietnam an international treaty;

   b) The protection registration application is filed within 12 months from the date on which the plant variety claimed for protection has been entered into the List of plant varieties permitted for production and trading in Vietnam.

2. In order to enjoy priority, the person who claims for it shall submit the request for priority within 3 months from the filing date of the protection registration application as well as a copy, certified by the authority, of the first application documents proving

that the plant varieties in both applications are the same and shall pay the prescribed fees. Within 2 years from the expiry of the priority time limit, or in proper time, depending on the species which the plant variety claimed in the application belongs to, after the first application is refused or withdrawn, the applicant is entitled to supply information, documents or materials necessary for the state administrative authority of plant variety to do the examination according to provisions of Articles 178 and 180 of this Law.

3. An application with a claim for priority shall bear the priority date as the filing date of the first application or the date on which the plant variety was entered into the List provided for in subparagraph b paragraph 1 of this Article.

Article 170. Plant variety Protection Certificate and National Register

1. Plant variety Protection Certificate shall record the denomination of variety and species; name of the right owner (hereinafter referred to as the Protection

a) The protected plant variety no longer fulfills the requirements of uniformity and stability as it did at the time of the grant;

b) The Protection Certificate owner fails to pay maintenance fees as prescribed;

c) The Protection Certificate owner fails to supply documents and propagating materials necessary for maintaining and keeping the plant variety as prescribed;

d) The Protection Certificate owner fails to change the denomination of the plant variety as requested by the state administrative authority of plant variety;

d') The Protection Certificate owner ceases to exist without a legal successor in title.

2. For the cases provided for in subparagraphs a, c and d paragraph 1 of this Article, the state administrative authority of plant variety shall issue a decision on cancellation of validity of the Protection Certificate on the relevant date.

3. For the case provided for in subparagraph b paragraph 1 of this Article, upon the expiry date of the time limit for payment of maintenance fees, the state administrative authority of plant variety shall issue a decision on cancellation of validity of the Protection Certificate as from the first day of the year for which the maintenance fees have not been paid.

4. For the cases provided for in subparagraphs a and d' paragraph 1 of this Article, any organization and individual shall be entitled to file a request for cancellation of validity of a Protection Certificate with the state administrative authority of plant variety.

Based on the result of the examination of request for cancellation of validity of a Protection Certificate and interested parties' opinions, the state administrative authority of plant variety shall make either a decision on, or a notice of refusal of, cancellation of the validity of the Protection Certificate.

5. For the cases provided for in subparagraphs a, b, c and d paragraph 1 of this Article, the state administrative authority of plant variety shall publish the cancellation with specified reasons for such cancellation in the specialized bulletin and at the same time shall serve a notice to the Protection Certificate owner. Within 30 days from the date of publication, the

Protection Certificate owner shall be entitled to file, with the state administrative authority of plant variety, a request for permission to overcome the reasons for cancellation and pay the prescribed fees in order to recover validity of the Protection Certificate. For the cases provided for in subparagraphs b, c and d paragraph 1 of this Article, within 90 days from the filing date, the holder shall overcome the reasons for cancellation. The state administrative authority of plant variety shall take into consideration the recovery of validity of the Protection Certificate and publish in the specialized bulletin.

For the cases provided for in sub paragraph a paragraph 1 of this Article, the validity of the Protection Certificate shall be recovered if the holder succeeds in proving that the plant variety meets the requirements of uniformity and stability and the fact has been certified by the state administrative authority of plant variety.

Article 173.

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Such null and void transactions shall be dealt with in accordance with the Civil Code.

Article 174. Amendments to Plant variety Protection Certificates

1. The owner of a Plant variety Protection Certificate shall be entitled to request the state administrative authority of plant variety to make amendment to the following information in the Protection Certificate, provided that fees and charges shall be paid:

a) Change or correction of mistakes relating to the name

e) Receipt of fees.

2. The documents evidencing the priority right for protection registration application for protection shall include:

a) A copy of the first application(s) certified by the receiving office;

b) Deed of assignment, inheritance of priority rights, if acquired from another person.

Article 177. Receiving protection registration applications; Filing date

1. A plant variety protection registration application shall only be received by the state administrative authority of plant variety if it consists of all the documents provided for in paragraph 1 Article 176 of this Law.

2. The filing date shall be the date on which the application is received by the state administrative authority of plant variety.

Article 178. Formal examination of protection registration applications

1. Within 15 days from the filing date, the state administrative authority of plant variety shall examine applications as to form in order to verify their formal validity.

2. A protection registration application shall not be regarded as being formally valid in the following cases:

a) The application does not fulfill the requirements of formality;

b) The plant variety claimed in the application does not belong to any species in the List of protected plant species, which is promulgated by the Ministry of Agriculture and Rural Development;

c) The application is filed by the person who does not having the right for filing including when such right belongs to more than one organization or individual but one or several of them do not agree to execute the filing;

d) The applicant fails to pay fees as prescribed.

3. The state administrative authority of plant variety shall carry out the following procedures:

a) To serve a notice of refusal to accept the application in cases provided for in subparagraphs b and c paragraph 2 of this Article, in which the reasons for refusal shall be clearly stated;

b) To serve a notice to the applicant for him to overcome defects in cases provided for in subparagraphs a and d paragraph 2 of this Article, in which the reasons therefore shall be clearly stated, and a time limit of 30 days from receipt of such notice for the applicant to overcome defects shall be fixed;

c) To serve a notice of the refusal to accept the application if the applicant fails to overcome defects and fails to have justifiable objection to such refusal as provided for in subparagraphs a and d paragraph 2 of this Article;

d) To serve a notice of acceptance of the application, and request the applicant to submit propagating material to the organization in charge of the technical test and follow the procedures provided for in Article 180 of this Law where the application is formally valid and where the applicant has successfully overcome defects or submitted justifiable objection to the notice of refusal to accept application as provided for in subparagraph a of this paragraph.

Article 179. Publication of protection registration applications

1. Where an application is accepted as formally valid, the state administrative authority of plant variety shall publish it in the specialized bulletin on plant varieties within 90 days from the date of it is accepted.

2. The contents of publication of an application shall include the number of the application, the date of filing, representative (if any), the applicant, the owner, the denomination of the plant variety and species, the (0o TDprop accept the applccepted as formalaragraph.)Tj/TT6 1

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b) The examination of results of Technical Test of the plant variety.

2. Technical Test means the conduct of growing tests in order to determine the distinctness, uniformity and stability of plant varieties.

The technical test shall be conducted in accordance with regulations of the Ministry of Agriculture and Rural Development by the state authority or organizations or individuals capable of conducting such test.

The state administrative authority of plant variety may use available results of prior technical test.

3. The time limit for examination of the technical test results shall be 90 days from the date of receiving thereof.

Article 181. Amendment, division, conversion of plant variety protection registration applications

1. Until the state administrative authority of plant variety makes a notice of refusal of, or a decision on the grant of a Protection Certificate, the applicant shall be entitled to do the following:

a) To make amendment or supplementation to the application;

b) To divide the application;

c) To request for recordation of changes in name and address of the applicant;

d) To request for recordation of changes in the applicant due to assignment of the application, transfer the right to the application by inheritance, merge, separation the legal person by a decision of the authority.

2. The person who requests any of the procedures provided for in paragraph 1 of this Article shall pay prescribed fees.

3. In case of division of an application, the filing date of the divided application shall be determined as that of the original application.

Article 182. Withdrawal of plant variety protection registration applications

1. Until the state administrative authority of plant variety decides to grant or refuse to grant a Protection Certificate, the applicant shall be entitled to declare

the withdrawal of the industrial property registration application in written form in his or her own name or through an industrial property representative agency provided that the investment of authority for withdrawal of the application is expressly stated in the power of attorney.

2. At the moment an applicant declare the withdrawal of the application, all further procedures related to the application shall be suspended; fees and charges which already paid in relation to the procedures that have not been yet commenced shall be refunded to the applicant at his or her request.

3. Any plant variety protection registration application already withdrawn or considered as withdrawn before publication shall be considered as never filed.

Article 183. Third parties' opinions on the grant of Plant variety Protection Certificates

As from the date of publication of a registration application for Protection Certificate in the specialized bulletin until the date of decision on the grant of a Protection Certificate, any third party shall be entitled to present to the state administrative authority of plant variety opinions of the grant or refusal of a Plant variety Protection Certificate. Such opinions shall be taken into consideration only if they are made in writing with arguments accompanied by materials or references substantiating such arguments.

Article 184. Refusal to grant Plant variety Protection Certificate

The grant of a Protection Certificate shall be refused in respect of a plant variety protection registration application in case the plant variety does not fulfill requirements provided for in Articles 178 and 180 of this Law. In case of refusal, the state administrative authority of plant variety shall carry out the following procedures:

1. To serve a notice of an intended refusal to grant a Protection Certificate, in which the reasons shall be equoy

3. To carry out the procedures provided for in Article 185 of this Law if the applicant overcomes defects or submits justifiable objection to such intended refusal as provided for in paragraph 1 of this Article.

Article 185. Granting plant variety the Protection Certificate

Where a plant variety protection registration application does not fall under the cases for refusal as provided for in Article 184 of this Law and the applicant has paid the prescribed fees, the state administrative authority of plant variety shall carry out the following procedures:

1. To make decision on the grant of a Protection Certificate and make an entry into the National Register for plant variety protection;

2. To issue the Protection Certificate to the applicant.

Article 186. Objection to grant or refusal to grant Protection Certificates; re-examination of protection registration applications

1. An applicant and any third party shall be entitled to object to a decision on, or a refusal of, the grant of a Protection Certificate.

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1. To use or permit other persons to use the plant variety in accordance with Article 189 of this Law;

2. To prevent other persons from using the plant variety in accordance with Article 191 of this Law.

3. To assign or leave to heirs or transfer to other successors in title the right to plant variety protection following the stipulations in Chapter XV of this Law.

Article 188. Rights of the breeder

The breeder of a plant variety has following rights:

1. To be named as breeder in the Plant variety Protection Certificate and in the National Register of plant varieties and in the documents in which the plant variety is published;

2. To get compensation as provided for in paragraph 1 Article 194 of this Law;

3. To leave the right to compensation to his or her heirs;

4. To request the authority to deal with or take into the court any person who infringes the rights provided for in subparagraphs a and b of this paragraph.

Article 189. Right to use the plant variety

The right to use a plant variety is to conduct any of the following acts with respect to propagating materials of the plant variety:

1. Production or multiplication;

2. Processing for the purpose of propagation;

3. Offering for sale;

4. Selling or other marketing;

5. Exporting;

6. Importing;

7. Stocking for any of the purposes listed above.

Article 190. Extension of the rights for other plant variety

The rights to a plant variety shall also be the same for the following other plant varieties, dependent plant varieties:

1. Plant varieties that essentially derived from the protected plant variety, where the protected plant

variety itself is not essentially derived from another protected plant variety;

A plant variety is considered as essentially derived from a protected plant variety when:

a) It is retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected variety and is clearly distinguishable from the protected variety;

b) Except for the differences resulting from actions on the protected variety such as the selection of natural or stimulated mutations, reverse breeding or genetic change etc, it conforms to the original plant variety in the expressions of dominants of genotypes or their combinations of the protected plant variety.

2. Plant varieties that are not clearly distinguishable from the protected plant variety;

3. Plant varieties the production of which requires the repeated use of protected plant variety.

Article 191. Acts which infringe the rights over plant varieties

The following acts shall be considered as infringements upon to the rights of the Protection Certificate owner and the breeder of a plant variety:

1. Exploiting or using the rights of the Protection Certificate owner without his or her permission;

2. Using a plant variety denomination identical with or similar to the denomination of a protected plant variety for plant varieties of the same or closely related species;

3. Infringing the provisional rights of the Protection Certificate owner without payment of remuneration according to the stipulation at Article 192 of this Law;

4. Failure to pay compensation to the breeder of the plant variety or failure to respect the right to be named as the breeder as provided for in paragraph 1 of Articles 188 and 194 of this Law.

Article 192. Provisional rights to plant varieties

1. The provisional rights over a plant variety are the rights of the right owner applicable from the date of publication of the protection registration application until the date of grant of a Protection Certificate. The

applicant for protection shall not have such right until a variety Protection Certificate is granted.

2. If the applicant for protection registration of a plant variety knows that a plant variety is being used by another person for commercial purposes, the applicant shall have the right to serve a written notice of his or her application filing which specifies the filing date and the date on which a plant variety is published in the specialized bulletin of plant variety to such user so that the later shall decide either to terminate such use or to be subject to later payment of remuneration in accordance with paragraph 3 of this Article in case a Protection Certificate is granted.

3. In case the person having been notified as provided for in paragraph 2 of this Article keeps using such plant variety, if a Plant variety Protection Certificate is granted, the Protection Certificate owner shall have the right to request such user of the plant variety to pay a remuneration equivalent to the fees for licensing such plant variety within the relevant scope and period of use.

Section 2. Limitations of plant variety right

Article 193. Limitations of plant variety right

The following acts are not considered as infringements of the rights to a plant variety:

1. Using the plant variety privately and for non-commercial purposes;

2. Using the plant variety to breed plant varieties for scientific research;

3. Using the harvested products of the protected plant variety by production households for propagation and cultivation in the next crops in their own holdings.

4. Rights over a plant variety shall not be extended to the acts related to any materials of the protected plant variety or of another plant variety that essentially derived from the protected plant variety or any materials originating from such materials which have been sold or otherwise put into the Vietnamese or overseas market by

the breeder or his or her nominee, except for such acts that:

a) Relate to the continuous propagation of the plant variety;

b) Relate to the export of propagating materials of the plant variety to a country where the genus or species of the plant variety are not protected except where such materials are exported for consumption purpose;

The materials of the protected plant variety referred to above may be propagating materials, harvested products or any other products directly produced from the harvested products of the protected plant variety.

Article 194. Obligations of the Protection Certificate owner and the Breeder

1. The Protection Certificate owner shall have the following obligations:

   a) To pay compensation to the breeder as agreed between them, or in accordance with the laws where there is no such an agreement;

   b) To pay prescribed maintenance fees for the Plant variety Protection Certificate.

   c) To preserve the protected plant variety, and to supply propagating material of the protected variety to the state administrative authority of plant variety and to maintain the stability of the protected variety as prescribed.

2. The Breeder of a plant variety shall have the obligation to help the owner of the plant variety to maintain the propagating material of the protected plant variety.

Chapter XV

TRANSFER OF PLANT VARIETY RIGHTS

Article 195. Licensing for use of plant varieties

1. Licensing for use of a plant variety means the permission of the Holder of the plant variety given to another person to conduct one or some acts of his right to use the plant variety.

Article 198. Compulsory licensing for use of the plant variety

1. Compulsory licensing for use of a plant variety means its owner permission of use compelled by a decision of the state administrative authority of plant variety in the cases provided in Article 199 of this Law.

2. A compulsory license for use of a new plant variety shall be non-exclusive.

3. The compulsory licensee for use of a new plant variety shall not assign such right of use, except with the assignment of his or her business premise of plant variety;

1. To receive an amount of money corresponding to the economic value of such right of use or equivalent to the price of contractual licensing of such right with similar scope and term;

2. To request the state administrative authority of plant variety to amend, cancel or invalidated the validity of the compulsory license when the conditions resulting in such compulsory licensing no longer exist or if such amendment, cancellation or invalidation does not cause damages to the compulsory licensee.

Part five

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Chapter XVI

GENERAL PROVISIONS ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Article 201. Right to protection by oneself

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:

   a) Taking technological measures to prevent infringement of intellectual property rights;

   b) Requesting organizations, individuals that have committed acts of infringement of intellectual property rights to terminate the infringing acts, apologize, publicly rectify and compensate damages;

   c) Requesting the competent state agencies to handle acts of infringement of intellectual property rights in accordance with provisions of this Law and other related laws and regulations;

   d) Initiating a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests.

2. Organizations and individuals that suffer from damage caused by acts of infringement of intellectual property rights or discover acts of infringement of intellectual property rights that cause damage to consumers or the society shall have the right to request competent

agencies to handle such acts of infringement in accordance with the provisions of this Law and other related laws and regulations.

3. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request competent agencies to impose civil remedies provided for in Article 205 of this Law and administrative remedies provided for in the Law on Competition.

Article 202. Remedies against acts of infringement of intellectual property rights

1. Organizations and individuals that have committed acts of infringement of other's intellectual property rights are liable to civil, administrative or criminal remedies, depending on nature and extent of such acts of infringement.

2. In appropriate cases, competent agencies shall have the right to apply provisional measures, intellectual property control measures with regard to imports and exports and preventive measures provided for in this Law and other related laws and regulations.

Article 203. Authorities in handling the infringement of intellectual property rights

1. Courts, inspectorate, market management agencies, custom offices, police agencies and the People's Committees of all levels, within its functions, duties and authorities, are entitled to handle acts of infringement of intellectual property rights.

2. Application of civil remedies and cri

1. Inspection and assessment on intellectual property means the competent organizations or individuals use their knowledge and expertise in intellectual property to make assessment, conclusion on matters related to intellectual property right infringement cases.

2. Intellectual property enforcement agencies shall have the right to call for inspection, assessment on intellectual property in order to handle those cases accepted by these agencies.

3. Intellectual property right holders and other related organizations or individuals shall have the right to request for inspection, assessment on intellectual property in order to protect their rights and interests.

4. The government shall make detailed provisions on inspection and assessment on intellectual property.

Chapter XVII

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH CIVIL REMEDIES

Article 205. Civil remedies

The court shall take the following civil remedies to handle organizations and individuals that have committed acts of infringement of intellectual property rights:

1. Compelling termination of the infringement of intellectual property rights;

2. Compelling public rectification and apology;

3. Compelling the performance of civil obligations;

4. Compelling compensation for damages;

5. Compelling distribution or use for non-commercial purpose of goods, materials and implements the predominant use of which has been in the creation or trading of intellectual property right infringing goods, provided that such distribution and use does not affect the exploitation of rights by the intellectual property rights holder.

Article 206. Rights and burden of proof of the litigants

1. The plaintiff and defendant in a lawsuit against infringement of intellectual property rights shall have the rights and burden of proof provided for in Article 79 of the Civil Procedures Code and this Article.

2. The plaintiff shall prove that he or she is the intellectual property right holder with one of the following evidences:

   a) A valid copy of the Protection Title, or an extract from the National Registers of inventions, industrial designs, layout-designs, marks, geographical indications, plant varieties; the copyright registration certificate, the related right registration certificate;

   b) Necessary evidence proving basis the establishment of copyrights, related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the rights to business secrets, the rights to trade names or the rights to well-known marks;

   c) A certificate for registration of the agreement for use of industrial property subject matters.

3. The plaintiff shall produce evidence of the infringement of intellectual property rights or acts of unfair competition.

4. In the following cases and in a lawsuit against an infringement of the right to a patented invention, which is a production process, the defendant shall prove that his or her products are made by a process other than the protected process:

   a) The product made by the protected process is new;

   b) Although the product made by the protected process not new, but the owner of the protected process believes that the product of the defendant is made by the protected process and failed identify the process used by the defendant despite that reasonable measures have been taken.

5. In case a party to a lawsuit against an infringement of intellectual property rights has proven that evidence relevant to substantiation of his or her claims lies in the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the later to produce such evidence.

6. In case of a claim for damages, the plaintiff must prove his or her actual damages and specify the basis for his or her claim in accordance with Article 208 of this Law.

Article 207. Principles of determination of damages caused by the infringement of intellectual property rights

1. Damages caused to the intellectual property right holders by an infringement comprise both physical and spiritual damages as follows:

   a) Physical damages comprise loss in property, decrease in income and profits, reasonable expenses for prevention and restoration from such damages, reasonable attorney fees and other tangible losses; loss in business opportunities, decrease in business reputation and other intangible losses;

   b) Spiritual damages comprise loss to honor, dignity, prestige, reputation and other spiritual losses.

2. The level of damage shall be determined on the basis of the actual losses suffered by the intellectual property right holders due to the infringement of his or her intellectual property rights.

Article 208. Bases for determination of damages caused by the infringement of intellectual property rights

1. In case the plaintiff succeeds in proving that an infringement of intellectual property rights has caused physical damages to him or her, he or she shall have the right to request the court to determine the rate of compensation on one of the following bases:

   a) The total physical damage determined in an amount of money plus the profits gained by the dependant as a result of infringement if reduced profits of the plaintiff have not yet been included in the total physical damage;

   b) The value of the transfer of the right to use the intellectual property subject matter with the presumption that the defendant has been transferred by the plaintiff with the right to use that intellectual property subject matter under an agreement for using such intellectual property subject matter to the extent equivalent to the act of infringement committed;

   c) Where it is impossible to determine the rate of compensation in accordance with subparagraphs a and b of this paragraph, that rate shall be fixed by the court but not exceeding VND 500 million.

2. If the plaintiff succeeds in proving that the infringement of intellectual property rights has caused spiritual damage to him or her, he or she shall have the right to request the court to determine the rate of compensation ranging from VND 5 million to VND 50 million, depending on the level of damage.

Article 209. Right to request the court to apply provisional measures

1. The right to request the court to apply provisional measures in the intellectual property field shall be exercised in accordance with this Law and other relevant provisions of the civil procedure legislation.

2. An intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:

a) There is a threat of damage to the intellectual property right holder, which cannot be prevented by any other measure;

b) There is a threat of dispersal or destruction of intellectual property right infringing goods and relevant evidence if they are not protected in time.

3. Request for application of provisional measures may be made simultaneously with the initiation of a lawsuit or after a lawsuit has been initiated at the court.

Article 210. Provisional measures

Provisional measures applicable to goods suspected of infringing upon intellectual property rights or to the materials or implements for producing or trading such goods comprise the followings:

1. Seizure;

2. Attachment;

3. Sealing, prohibition of changing status or displacing;

4. Prohibition of transferring ownership (including assignment, donation, presentation or other similar forms);

5. Other provisional measures as provided for by the civil procedure legislation.

Article 211. Obligations of the person who requests for the application of provisional measures

Section 1. Enforcement of intellectual property rights with administrative and criminal remedies

Article 214. Applicability of administrative remedies

1. Organizations and individuals that have committed one of the following acts shall be subject to the administrative remedies:

   a) Committing an act of infringement of intellectual property rights, which causes loss to consumers or the society;

   b) Committing an act of infringement of intellectual property rights, even if a written notice has been served by the intellectual property right holder;

   c) Producing, assigning others to produce, importing, and trading in intellectual property counterfeit goods referred to in Article 220 of this Law;

   d) Producing, importing and trading in articles bearing a mark or a geographical indication that is identical with or confusingly similar to a protected mark or a protected geographical indication;

   d’) Falsely assuming oneself as the author or intellectual property right holder.

2. Organizations and individuals that have committed acts of unfair competition sd’) FalCsTD-.6 have bj

2. Counterfeit mark goods are goods or their packaging bearing a mark or a sign which is identical with or substantially indistinguishable from a mark or geographical indication which is protected for such goods without consent of the owner of such mark or the management agency of such geographical indication respectively.

3. Pirated goods are copies made without the consent of the copyrights holder or the related rights holder.

Article 217. Administrative remedies

1. Organizations and individuals that have committed acts of infringement referred to in Article 214 of this Law shall be compelled to terminate the infringement and subject to one of the following main remedies:

   a) Warning;

   b) Monetary fine.

2. Depending on nature and level of the infringement, the infringing organizations and individuals are liable to the following complementary remedies:

   a) Confiscation of intellectual property counterfeit goods, implements and materials mainly used for manufacturing or trading such intellectual property counterfeit goods;

   b) Suspension of relevant business activities for a definite term.

3. In addition to the remedies referred to in paragraphs 1 and 2 of this Article, organizations and individuals that have committed infringing acts are liable to the following restoration remedies:

   a) Compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes provided that such distribution and use does not affect the exploitation of rights by intellectual property right holder;

   b) Compelling delivery of the transiting goods out of the territory of Vietnam or re-export of the intellectual property counterfeit goods, implements and materials that are imported mainly for manufacturing such intellectual property counterfeit goods, after having removed infringing elements.

4. The monetary fine rates referred to in subparagraph b of paragraph 1 of this Article shall be at least equal to the

2. Suspension of customs procedures for suspected intellectual property right infringing goods is a measure taken at the request of the intellectual property right holder for the purpose of collecting information and evidence about the lots of goods which serves as the basis for the intellectual property right holder to exercise the right to request for the handling of the infringement and to request for the application of provisional measures or preventive measures.

3. Supervision to detect goods containing signs of infringement of intellectual property rights is a measure taken at the request of the intellectual property right holder for the purpose of collecting information in order to exercise the right to request for the suspension of customs procedures.

4. During the course of application of measures referred to in paragraphs 2 or 3 of this Article, if any goods detected to be intellectual property counterfeit goods in accordance with Article 216 of this Law, the customs offices shall have the right and duty to impose administrative remedies referred to in Article 217 and Article 218 of this Law.

Article 220. Obligations of person who requests for the suspension of customs procedures

A person who requests for the suspension of customs procedures shall have the following obligations:

1. Proving that he or she is the intellectual property right holder by producing the materials and evidence referred to in paragraph 2 Article 206 of this Law.

2. Providing information sufficient to identify the suspected intellectual property right infringing goods and the following information, if any:

   a) Name and address of the importer or exporter;

   b) Predicted information about the time and venue of completion of import or export procedures;

   c) Detailed description or photo of the goods suspected to be infringing goods;

   d) Assessment results issued by the competent agencies in respect of the prima facie evidence.

3. Lodging an application with the customs office and pay fees and charges prescribed by the laws and regulations.

obligations and paid all the costs referred to in sub-paragraph b) of this paragraph.

Article 222. Obligations of the person who requests for supervision to detect goods containing signs of infringement

A person who requests for supervision to detect goods containing signs of infringement shall have the following obligations:

1. Proving that he or she is the intellectual property right holder by producing the materials and evidence referred to in paragraph 2 Article 206 of this Law;

2. Providing sufficient information to identify such goods;

3. Lodging an application with the customs office and pay fees and charges prescribed by the laws and regulations.

Article 223. Supervision to detect goods containing signs of infringement

When detecting a lot of goods containing signs of infringement, the customs office shall immediately notify the person who requests for such supervision.

and regulations applicable at the time of the filing of the application.

3. All rights and obligations conferred by a Protection Title granted under laws and regulations applicable before the effective date of this Law and procedures for maintenance, renewal, amendment, licensing, assignment and resolution of disputes related to such a Protection Title shall be subject to this Law. Distinctively, the grounds for invalidation of a Protection Title shall be subject to laws and regulations the provisions applicable at the time of its grant.

4. Any trade secret or trade name having been in existence and protected under Decree 54/2000/ND-CP dated October 3, 2000 of the Government on the protection of industrial property rights in respect to trade secrets, geographical indications, trade names and the protection of rights to repression of industrial property related unfair competition shall continue to be protected under this Law.

5. From the effective date of this Law, geographical indications, including those protected under the Decree referred in paragraph 4 of this Article, shall only be protected upon registration in accordance with this Law.

Article 225. Guidance of implementation

The Government, the People Supreme Court shall be responsible for guiding the implementation of this Law.

Article 226. Effectiveness

This Law shall enter into force as from 1 July 2006.