

infringement, settlement of intellectual property right infringement;

3. "*Infringing elements*" shows specific results of acts of infringement;

4. "*Infringing goods*" means products containing infringing elements;

5. "*Examined persons*", "*examined acts*", "*examined products*" mean respectively persons, acts and products suspected and put under examination in order to conclude whether they are infringers, acts of infringement, or infringing goods;

6. "*Civil Procedures Code*" means Civil Procedures Code No. 24/2004/QH11 passed on 15 June 2004;

7. "*Ordinance on Settlement of Administrative Violations*" means the Ordinance on Settlement of Administrative Violations No. 44/2002/PL-UBTVQH passed on 02 July 2002.

Article 3. Subjects to be put under settlement of infringement

1. Organisations, individuals committing one of the acts stipulated in Articles 28, 35, 126, 127, 129, 188 of the Intellectual Property Law during the relevant intellectual property right protection period shall be considered as having committed intellectual property right infringement (hereinafter referred to as Infringer).

2. An Infringer shall be dealt with in accordance with the provisions of Part Five of the Intellectual Property Law and hereof, in line with civil laws and the laws on settlement of administrative violations.

Article 4. Statue of limitations

1. The statue of limitations to request a court to take civil measures against acts of infringement shall comply with Article 159 of the Civil Procedures Code.

2. The statue of limitations to request competent authorities to take administrative measures for settlement of infringement shall comply with Article 10 of the Ordinance on Settlement of Administrative Violations.

Chapter II

REQUESTING FOR SETTLEMENT OF INFRINGEMENTS

Article 5. Requester for settlement of infringements

Organizations and individuals referred to in Article 168 of the Intellectual Property Law shall have the right to request competent authorities for settlement of infringement as follows:

1. Intellectual property right holders shall have the right to initiate lawsuits at the competent court to request for application of civil remedies to protect their legitimate rights and interest or to request competent authorities for application of administrative measures or control measures of imports and exports for the purpose of settlement of infringements.

2. Intellectual property right holder, organizations, individuals suffering losses due to acts of infringement shall have the right to request competent authorities for application of administrative measures for the purpose of settlement of infringements.

3. Organizations, individuals discovering acts of infringement that cause damages to the society or consumers shall have the right to request competent authorities for

application of administrative measures for the purpose of settlement of infringement.

Article 6. Petitions for settlement of infringement

A request for settlement of infringement must be made in writing pursuant to the provisions concerning the order and procedures for application of relevant settlement measures and in accordance with the following provisions:

1. A petition for initiation of a civil lawsuit must be made in accordance with Article 164 of the Civil Procedures Code.

2. A petition for application of administrative measures, or of control measures of imports and exports must have the following major contents:

- a) Full date of the petition;
- b) Name and address of the requester for application of measures for settlement of infringement; name of the legal representative of the requester if such request is made by the representative;
- c) Name of the agency that receives the petition;
- d) Name and address of the infringing organizations/individuals;
- e) Name(s) and address(es) of organizations/individuals with related rights and obligations (if any);
- f) Name and address of the witness(es) (if any);
- g) Brief information about the infringed intellectual property rights, including the right, bases for appearance of the right and its subject matters;
- h) Brief information about the act of infringement: date and venue of the infringement, brief description of the infringed subject matter, acts of infringement (with regard to a petition for application of control measures of imports and exports: the method of import/export, exporting country, mode of packaging), threats of circumstances when certain measures need to be applied to prevent infringements and to secure the imposition of penalties (if any);
- i) Proposed measures of settlement of infringement; measures of temporary detention of imports, exports;
- j) A list of documents and evidence accompanying the petition;
- k) Signature of the petitioner with a seal (if it is so required).

Article 7. Accompanying documents and evidence

1. A requester for settlement of infringement must submit the petition together with the following documents and evidence to prove his/her request:

- a) Evidence proving that he/she is the right holder, if the requester is the right holder or a transferee or heir of the intellectual property rights;
- b) Evidence proving the actual occurrence of the acts of infringement; or proving the suspicion of intellectual property rights infringing imports and exports (with regard to a petition for application of control measures of imports and exports);

2. A petition may also be accompanied by other documents and evidence to service the settlement of infringement.

- a) The original or a valid copy of the descriptive documents or specimen exhibit expressing the protected subject matter;
- b) The specimen exhibit, photos or recorded images of the examined products;
- c) The document of explanation and comparison between the examined products and protected subject matter;
- d) Minutes, testimonies and other documents evidencing acts of infringement.

2. If the requester for settlement of infringement succeeds in proving that any appropriate evidence necessary to prove the act of infringement is under control of the Infringer and therefore cannot be approached, the requester must provide evidence of this and shall have the right to request competent authorities to compel the Infringer to provide such evidence.

Article 10. Evidence to prove damages

1. Evidence to prove damages comprises a list or an explanatory document of the method of determination of damages which needs to specify the bases for determination and calculation of damages.

2. Evidence to provide damages may also be the results of a call for examination or appraisal in accordance with the provisions of the law.

Article 11. Filing petitions for settlement of infringement

1. A petition for settlement of infringement may be filed either directly or through the legal representative of the requester for settlement of infringement.

2. A petition for initiation of a legal lawsuit shall be filed with the local competent court where the infringement occurs as provided for in Article 33.1(a) and Article 34.2 of the Civil Procedures Code.

3. A petition for application of administrative measures shall be filed with one of the local competent authorities where the infringement occurs as provided for in Article

INFRINGEMENTS AND DETERMINATION OF DAMAGES

Section 1

General bases for determination of acts, nature and seriousness of infringements

Article 13. Bases for determining acts of infringement

Examined acts shall be regarded as acts of infringement in accordance with Articles 28, 35, 126, 127, 129 and 188 of the Intellectual Property Law on the following bases:

1. The infringed subject matter is a protected one;
2. The examined products contain infringing elements;
3. The person committing the examined act is neither the intellectual property right holder nor anyone who is permitted either by laws or by any competent authorities under Articles 25, 26, 32, 33, 125.2, 125.3, 133, 134, 137.2, 145, 190 and 195 of the Intellectual Property Law;
4. The examined act is committed in Vietnam and during the period of the intellectual property right protection.

Article 14. Determination of protected subject matters

1. The determination of a protected subject matter under Article 13.1 of this Decree shall be carried out by way of considering all the documents and evidence to prove the bases for appearance or establishment of the right as set out in Article 6 of the Intellectual Property Law, in order to determine whether or not there are bases for determination of the act of infringement.

2. A subject matter shall be regarded as a protected one if all the relevant conditions for intellectual property right protection set out in Sections 1 and 2 of Chapters I, VII and XII of the Intellectual Property Law and detailed in clauses 3, 4, 5 and 6 of Article are met in full.

3. With regard to the intellectual property rights that have been registered with the competent authorities, the protected subject matter shall be determined under the registration certificates, titles of protection and other documents accompanying such certificates and title of protection.

4. With regard to the subject matters of copyrights and related rights which are not registered with the competent authorities, the protected subject matter shall be determined on the basis of the original copy of the work, fixation of the subject matter and relevant documents, if any.

5. With regard to trade names, the protected subject matter shall be determined on the basis of documents of expression, explanations and descriptions of the trade names and of their using process and the sector and territory where such trade names are used.

6. With regard to business secrets, the protected subject matter shall be determined on the basis of documents expressing the contents and nature of the business secrets and explanations and descriptions of relevant measures of their protection.

Article 15. Determination of infringing elements

1. The determination of infringing elements as referred to in Article 13.2 of this Decree shall be carried out by way of reference and comparison of the protected subject

about him/her or a another person being the author of the whole or part of a work or being the performer of the whole or part of a performance

2. The following acts shall be regarded as acts of assuming authors' names and performers' names:

a) Putting the name of a person who is not the author in the copies of a work or putting the name of a person who is not the performer in the copies of the fixation of a performance;

b) Putting the name of a person who is not the author or the performer in the documents of advertising, notifications or other similar types of information;

c) Putting the whole or part of another person's work in one's works or products without notes and therefore misleading other people about one being the author of such part;

d) Putting the whole or part of another person's performance in the recording of one's performance and therefore misleading other people about him/her being the performer of such part;

dd) Other acts committed for the purposes set out in clause 1 of this Article.

Article 19. Infringing elements of inventions

1. Infringing elements of an invention may fall within one of the following forms:

a) A product or part (component) of the product is identical to a product or part of a product being protected under an invention;

b) A process being uniform (identical) to a process being protected under an invention;

c) A product or part of the product being produced through a process being identical to a process being protected under an invention.

2. The basis for determination of infringing elements of an invention is the scope of invention protection which is determined in accordance with each of the requirements for invention protection attached to the invention patent or a utility solution patent. In case all the signs falling within at least one bullet point of the requirements for invention protection are present (used) in the product, part of the product, the process or part of the process being suspected, either in a uniform manner or in form of a similar variant, such product, part of the product, process or part of the process shall be regarded as infringing elements; where:

a) Two signs are regarded as being identical if they have the same characteristics, utility purpose and have the same relationships with other signs;

b) A sign is regarded as a similar variant to another sign if the characteristics of the former sign have been known in a relevant technical sector, if it has the same utility purpose and if the method of their creations is basically the same.

Article 20. Infringing elements of industrial designs

1. Infringing elements of an industrial design mean a product or part of such product of which the external appearance is identical to or is insignificantly different from the protected industrial design.

b) Goods and services bearing the suspected sign are identical or similar in substance to, have a relationship in terms of functions and utility with, and have the same distribution channel with, the protected goods and services; or any goods and services bearing a sign that meets all the conditions set out in point (a) of this clause with regard to a well-known mark, and therefore create wrong impression about the user of such sign being the owner of the mark or having a relationship with the owner of the mark.

Section 3

Determination of damages

Article 22. Scope of application

1. The provisions of this Section shall be applied to implement the provisions on the principles of determination of damages due to intellectual property right infringements as set out in Article 204 of the Intellectual Property Law.

2. The provisions of this Section shall not be applied to determine the losses caused by acts of infringement to consumers and the society.

Article 23. Principles for determination of damages

1. Damage as a result of an intellectual property right infringement referred to in Article 204 of the Intellectual Property Law and in this Section shall be actual losses including both physical and spiritual losses directly caused to the intellectual property right holder by such acts of intellectual property right infringement.

2. Actual losses shall be regarded as having been occurred on the following bases:

- a) The physical and spiritual losses are real and belong to the aggrieved person;
- b) The aggrieved person could achieve the interest referred to in point a of this clause.
- c) There is a decrease in or loss of income of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such profits if such act of intellectual property right infringement would not happen and such decrease or loss is really caused by such act of intellectual property right infringement.

3. The level of loss shall be determined in accordance with the infringing elements as provided for in Articles 24, 25 and 26 of this Decree.

Article 24. Loss in property

1. Losses in property shall be determined in accordance with the level of decrease in or loss of the in-cash value of the protected intellectual property right subject matters.

2. The in-cash value of an intellectual property right subject matter referred to in clause 1 of this Article shall be determined in accordance with the following bases:

- a) The price of transfer of the ownership right or the licensing price of the intellectual property right subject matter;
- b) The value of business capital contribution by way of intellectual property right;
- c) The ratio of the value of intellectual property right to the total assets of an

enterprise.

Article 25. Decrease in income, profits

1. The income, profits referred to in Article 204.1(a) of the Intellectual Property Law and in this Article include the following:

a) The income, profits gained from directly using and exploiting the intellectual property right subject matters;

b) The income, profits gained from leasing the intellectual property right subject matters;

c) The income, profits gained from licensing the intellectual property right subject matters.

2. The level of decrease in income, profits shall be determined on the following bases:

a) Direct comparison between the levels of actual income, profits before and after the acts of infringement are committed, applicable to each type of income set out in clause 1 of this Article, or

b) Comparison between the productions and volumes of products, goods and services actually consumed or supplied before and after the acts of infringement are committed; and

c) Comparison between actual sales price of the products, goods and services before and after the acts of infringement are committed.

Article 26. Losses in business opportunities

1. The business opportunities set out in Article 204.1(a) of the Intellectual Property Law and in this Article include the following:

a) Actual possibility of directly using or exploiting intellectual property right subject matters in the business course;

b) Actual possibility of leasing intellectual property right subject matters to other people;

c) Actual possibility of licensing or transferring the intellectual property right subject matters to other people.

2. A loss in business opportunities means loss of the in-

MEASURES AND BORDER CONTROL OF IMPORTS AND EXPORTS

Section 1

Settlement of Infringement By Administrative Measures

Article 28. Basis for application of administrative measures

Administrative measures shall be taken by competent authorities as stipulated in clauses 1, 3 and 4 of Article 200 of the Intellectual Property Law and Article 29 of this Decree for the purpose of settlement of infringement (hereinafter referred to as an infringement settlement agency) on the following basis:

1. The results of consideration of an application for infringement settlement stipulated in Article 30 of this Decree;
2. Notice requesting settlement of infringement from another infringement settlement agency in accordance with Article 31 of this Decree;
3. Results of inspection, or results of consideration of complaints and denunciations.

Article 29. Authority of agencies authorized to deal with administrative offences

1. Authority of an infringement settlement agency stipulated in clauses 1, 3 and 4 of Article 200 of the Intellectual Property Law shall be stipulated in details as follows:

- a. Market management agencies shall be competent to give administrative sanctions against acts of infringement arising in the circulation of goods and trade and business activities in the market.
- b. Customs authorities shall be competent to deal with administrative offences regarding acts of importing and exporting intellectual property right infringing goods.
- c. People's Committees of provinces and cities under central authority shall have the power to imp

infringement settlement agency stipulated in paragraphs a, b and c clause 1 of this Article

trading in right infringing goods.

4. The measure of suspension of business activities for a definite period of time shall only apply to the business activities directly relating to the act of infringement with at least one of the aggravating circumstances as provided for in Article 34.2 of this Decree. The period of suspension of business activities shall be 15 days, which shall be increased by 10 days for each of the aggravating circumstance.

5. Measures and forms of settlement of acts of infringement which are applicable to acts of right infringements referred to in this Article shall also be applied to acts of production of and trading in materials, raw materials and equipment mainly used to manufacture and trade right infringing goods.

Article 34. Mitigating and aggravating circumstances

1. Mitigating circumstances comprise the following

a) Unintentional act of infringement is committed at the absence of knowledge of the status of intellectual property protection and such act of infringement is promptly terminated at the request of the intellectual property right holder or the competent agency;

b) Infringers have successfully taken measures to restrict or overcome the consequences or has not, conceals

1. Infringing goods:

impossible to remove the infringement elements from infringing goods, means, supplies or raw materials mainly used to produce such goods, then measures specified in clause 1 may be applied.

If any infringement element cannot be removed from the infringing goods, means, supplies or raw materials mainly used to produce such goods, the measures referred to in clause 1 of this Article may be applied.

With respect to goods in transit or imported goods which are infringing goods which are not intellectual property counterfeit goods or means, supplies or raw materials mainly used to produce such goods, the competent authorities for settlement of infringement shall apply the measures specified in clause 1.c of this Article.

3. Infringing elements shall be dealt with in accordance with the measures prescribed in clause 1.b of this Article.

Article 37. Compelling distribution or use for non-commercial purposes

1. The compelled distribution or use of infringing goods for non-commercial purposes as set out in Article 202.5 of the Intellectual Property Law must satisfy the following conditions:

- a) the goods are useable;
- b) Infringement elements have been removed from the goods, means of business or supplying services may be removed.
- c) Such distribution or use is only for non-commercial purpose where the purposes of humanity, charity and public interest shall be given priority;
- d) Persons to whom goods are distributed or delivered for use are not potential customers of the intellectual property right holder.

2. The provisions of clause 1 of this Article shall also apply to materials and means for producing and trading infringing goods.

Article 38. Compelling destruction

The measure of compelled destruction of infringing goods and materials and equipment used for producing and trading those infringing goods as referred to in Article 202.5 of the Intellectual Property Law shall be applied when all the conditions for application of the measure of compelled distribution or use of goods and materials for non-commercial purposes as set out in Article 37 of this Decree are not met in full.

Article 39. Application of preventative measures and assurance of imposition of penalties

The power to take preventative measures and assure the imposition of administrative penalties as referred to in Article 215.2 of the Intellectual Property Law and the procedures and formalities for application of such measures shall be in accordance with Chapter V of the Ordinance on Dealing with Administrative Offences.

Article 40. Fast track application with respect to acts of producing, trading intellectual property counterfeit goods

1. Upon intellectual property counterfeit goods are being found, competent infringement settlement authorities shall issue a decision on suspending the acts of infringement, prepare minutes on such acts of infringement, apply measures to prevent

and secure application of punishment under Chapter V of the Ordinance on Settlement of

- a) Assessment of copyrights and related rights;
- b) Assessment of industrial property;
- c) Assessment of the rights over plant varieties.

Article 47. The right to call for or request for assessment

1. The following agencies shall be competent to call for assessment:

- a) The court;
- b) Agencies authorized to deal with acts of intellectual property right infringement by way of administrative measures;
- c) Agencies authorized to settle intellectual property-related complaints and denunciations.

2. The following organizations/individuals shall have the right to request for

such assessment or the person who requests such assessment for information;

) to prepare assessment dossiers, to be present as required in the writ of summon of the proceedings performing agency to explain the assessment conclusions if so requested;

e) to preserve the samples and documents relating to the assessment; to keep confidential all assessment conclusions and information and documents for assessment;

g) to independently issue assessment conclusions;

h) to compensate where intentionally issuing false assessment conclusions, causing damage to relevant individuals and organizations;

i) to comply with the regulations on procedures and formalities for assessment and to perform other rights and obligations as stipulated by law.

3. The Ministry of Science and Technology, the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development shall stipulate on the establishment of intellectual property assessing centres; the procedures for recognition of agencies permitted to perform intellectual property assessment; and shall make a list of assessing agencies for submission to the Ministry of Justice for announcement.

Article 49. Intellectual property assessing persons

1. Intellectual property assessing persons, including intellectual property assessors and case by case intellectual property assessing persons (hereinafter referred to as assessing persons), shall be responsible to perform assessment where called for or to provide assessment services upon request for intellectual property assessment.

2. Assessing persons shall have such duties and powers as stipulated in Article 48.2 of this Decree.

3. The Ministry of Culture and Information, the Ministry of Science and Technology, the Ministry of Agriculture and Rural Development shall stipulate the standards, conditions and procedures for recognition of intellectual property assessors and case by case intellectual property assessing persons; and shall prepare list of assessing persons for submission to the Ministry of Justice for announcement.

Those not included in the List of assessing persons but having deep experience or knowledge regarding the issues that need assessing, shall also be able to ask for or request for assessment.

Article 50. Call for assessment

1. Any call for assessment must be made in writing.

2. A minute of calling for assessment must have the following contents:

a) Name and address of the agency calling for assessment;

b) Name and address of the assessing organization or the assessing persons;

c) Details that need to be assessed;

d) Relevant evidence and documents;

) The time limit for issuing the assessment conclusions.

2. An assessment task upon a call may be completed by an assessing persons or the

collective of assessing persons. In case of a call for re-assessment, such re-assessment shall be carried out by the Assessment Council in accordance with the Ordinance on Judicial Assessment.

Article 51. Assessment request

1. A request for assessment must be made in the form of an assessment service contract to be entered into between the person requesting for such assessment and an assessing organization or an assessing person.

2. An assessment service contract shall contain the following major details:

- a) name and address of the organization/agency requesting for such assessment;
- b) name and address of the assessing organizations or assessing persons;
- c) specific contents of the assessment request;
- d) relevant evidences and documents;
- dd) the time limit for issuing assessment conclusions.
- e) rights and obligations of the parties.
- g) liabilities for breach of the contract.

2. An assessment task upon a request may be completed by an assessing person or the collective of assessing persons. In case of a request for re-assessment, such re-assessment shall be carried out by the Assessment Council in accordance with the Ordinance on Judicial Assessment.

Article 52. Written conclusion of assessment

1. Written conclusion of intellectual property assessment shall be considered as evidence used as grounds for determining the case.

2. Written conclusion of intellectual property assessment is a document specifying the following details:

- a) Name and address of the assessing organization or intellectual property assessing persons;
- b) Name and address of the agency calling for assessment or the organization/person requesting for assessment;
- c) Objects that need assessing, and the contents and scope of such assessment;
- d) The mode of assessment;
 -) Assessment conclusions;
- e) Time and place of performance and completion of the assessment.

2. Written conclusions of intellectual property assessment must be signed by the

Article 53. Assessment fees

1. Where an assessment is carried out upon a call of a court, then the regulations of the laws on civil proceedings on assessment fees shall apply.

2. Where an assessment is carried out upon a call of a competent authority for the purpose of settlement of complaints or denunciations regarding intellectual property, then the regulations of the Ministry of Finance shall apply.

3. Where an assessment is carried out upon a request, assessment fees shall be agreed between the parties.

4. The management and use of assessment fees by assessing organizations andng1(s)-40.085

Information, Ministry of Agriculture and Rural Development, the Ministry of Trade, the Ministry of Public Security and the Ministry of Finance.

2. The National Committee for Securing Intellectual Property Law Enforcement shall have the function to assist the Prime Minister in giving instruction to ministries, functional sectors and people's committees of provinces and cities under central authority in carrying out the following general activities as part of the intellectual property right protection tasks:

a) organizing implementation of policies and laws on intellectual property right protection; providing guidelines for inter-branch checking and inspection on infringement and dealing with infringement;

b) assigning the contact point agencies and coordinating agencies to deal with complicated infringements or infringements within the scope of settlement of different agencies or localities; providing guidelines and instruct unformed settlement of infringements under competence of settlement of different agencies; ;

c) Examining, urging, collecting, assessing and reporting to the Prime Minister on the settlement of intellectual property right infringements;

guidelines for implementation of strategies, policies and general legal documents on intellectual property right protection;

2. developing and providing guidelines for implementation of general programs and projects on enhancing intellectual property right protection measures;

3. doing statistical and reporting to the Government on intellectual property right protection activities on a nationwide scope, and on such basis, summarising, commenting and making proposals on specific policies and measures to improve efficiency of intellectual property right protection activities;

4. organising the development of general database of the intellectual property system;

5. negotiating accession to and organising implementation of international commitments and treaties on intellectual property right protection.

uniformed State management of intellectual property right protection:

1. Coordinating with the Ministry of Science and Technology in activities specified in Article 57 of this Decree relating to intellectual property right protection;
2. Coordinating with other local Provincial committees and competent authorities in application of measures for settlement of infringement;
3. Performing the tasks assigned by the National Committee for Securing Intellectual Property Law Enforcement.

Article 62. Checking and inspection of intellectual property right infringements

1. Basis for checking and inspection of intellectual property right infringements:
 - a) When competent infringement settlement authorities receive complaints and

copy the same to the following agencies:

a) Specialised inspectorates of the Ministry of Science and Technology or provincial Department of Science and Technology (with respect to intellectual property subject matters); Specialised inspectorates of the Ministry of Culture and Information or

4. Acts of IPR infringement currently given administrative remedies in accordance with the Ordinance on Settlement of Administrative Violations, the Civil Code 1995 and implementing documents of the Civil Code 1995 the money fines of which are lower than as stipulated in this Decree, shall be subject to such lower money fines; or if higher than the one under this Decree, then

Decree.

2. The Ministers of Ministry of Science and Technology, Ministry of Culture and Information and Ministry of Agriculture and Rural Development shall be responsible to provide guidelines for implementing this Decree.

**FOR AND ON BEHALF OF THE GOVERNMENT
THE PRIME MINISTER**