

Draft 2

Hanoi,

2006

DECREE

Making detailed provisions and providing guidelines for implementing the provisions of the Intellectual Property Law concerning industrial property

THE GOVERNMENT

Pursuant to the Law on the Organization of the Government dated 25 December 2001;

Pursuant to the Civil Code No.33/2005/QH11 dated 14 June 2005;

Pursuant to the Law on Intellectual Property No.50/2005/QH11 dated 29 November 2005;

At the request of the Minister of Science and Technology;

DECREES

Chapter I

GENERAL PROVISIONS

Article 1. The Scope of regulation

1. This Decree makes detailed provisions and provides guidelines for implementing the provisions of the Law on Intellectual Property No.50/2005/QH11 dated 29 November 2005 (to be referred to as the Intellectual Property Law) concerning the establishment, subject matters and contents of, and limitations to, industrial property rights as well as concerning various policies and measures to develop industrial property activities.
2. This Decree neither provides for the protection of industrial property rights nor for the handling of administrative offences in the field of industrial property.

Article 2. Applicable subjects of the industrial property provisions

1. The provisions concerning industrial property of the Intellectual Property Law and of this Decree apply to individuals, legal entities and other civil right holders of

- a) The Paris Convention for the Protection of Industrial Property entered into in 1883 and amended in 1967 (to be referred to as the Paris Convention).
- b) The Vietnam-US Bilateral Trade Agreement, entered into in 2000.
- c) The Agreement on Protection of Intellectual Property Rights and Cooperation in the field of industrial property entered into in 1999 between Vietnam and Switzerland.
- d) The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIP Agreement) to be applied as soon as Vietnam joins the World Trade Organization (WTO).
- () Other international treaties on or concerning the protection of industrial property rights of which Vietnam is a member as announced by the Ministry of Science and Technology to be applied when such international treaties become enforceable against Vietnam.

Article 3. Application of international treaties

1. Where any international treaty referred to in Article 2.2 of this Decree contains any provisions on industrial property rights which are different from those of the

2. An announcement of an international treaty referred to in paragraph 1 of this Article shall contain the following details:
 - a) Full text of the treaty and its implementing documents in the original language and its (their) Vietnamese translation(s).
 - b) The effective date of the treaty in Vietnam.
 - c) Details of reservation (if any).
 - d) A list of member countries of the treaty.

Article 5. The State administrative authority of industrial property rights

1. The National Office of Intellectual Property under the Ministry of Science and Technology shall be the State administrative authority authorized to issue, renew, extend, cancel, terminate, or amend the validity of protection titles for inventions, industrial designs, lay out designs, marks or geographical indications or shall recognize an international registration in accordance with Article 6.3 of Chapter VIII of the Intellectual Property Law.
2. The Ministry of Science and Technology shall provide for in detail the functions and duties of the National Office of Intellectual Property upon exercising the powers referred to in paragraph 1 of this Article.

Article 6. Competence and responsibility for State administration of industrial property

1. The Ministry of Science and Technology shall have the following competences and responsibilities during State administration of industrial property:
 - (a) Formulation and organization of the implementation of strategies and policies on the protection of industrial property rights;
 - (b) Promulgation, submission to the competent agency for promulgation, of and organization of the implementation of legal documents on industrial property;
 - (c) Organization of the administration mechanism; providing operational instructions and organizing professional and operational training courses for industrial property management agencies of various ministries, sectors and localities;
 - (d) Direction of the implementation and implementation of industrial property procedures;
 - () Implementation of various measures to protect legitimate rights and interest of the State, organizations and individuals in the industrial property field; coordinating with State agencies and social organizations in taking various measures to protect industrial property rights;

(e)

4. Departments of science and technology shall have the function to assist the chairmen of people's committees of provinces and cities under central authority in

2. If an organization or individuals fails to meet the conditions set out in Articles 86, 87 and 88 of the Intellectual Property Law but still files an application for registration of an invention, industrial design, mark, layout design or geographical indication, its application shall be dealt with as follows:
 - a) If the failure to meet those conditions by such organization or individual is discovered before a protection title is granted, the application shall be regarded as invalid under Article 109.2(c) of the Intellectual Property Law;
 - b) If the failure to meet those conditions by such organization or individual is discovered after a protection title is granted, the validity of such protection title shall be annulled in accordance with Article 96.1(a) of the Intellectual Property Law.

Article 11. Right to registration of inventions, industrial designs and layout designs of the State

1. If an invention, industrial design or a layout design is created on the basis of full financial, material and technical investments by the State, the right to registration of such invention, industrial design or layout design shall belong to the State; the agency or organization assigned by the State to act as the investment owner shall exercise the above right to registration for and on behalf of the State.
2. If an invention, industrial design or a layout design is created on the basis of a capital contribution by the State (either by way of funds or material and technical facilities), a part of the right to registration of such invention, industrial design or layout design shall belong to the State pursuant to the percentage of its capital contribution; the agency or organization which acts as the owner of the State capital contribution shall be responsible to exercise the State share in the above right to registration for and on behalf of the State.
3. If an invention, industrial design or a layout design is created on the basis of the research and development cooperation between a State agency/organization and another organization/individual, unless it is otherwise agreed in the research and development cooperation agreement, a part of the right to registration of such invention, industrial design or layout design shall belong to the State pursuant to the percentage of the contribution by such State agency/organization. The State agency or organization which takes part in the research and development cooperation shall be responsible to exercise the above right to registration for and on behalf of the State.
4. The State agency/organization exercising the right to registration of an invention, industrial design or a layout design as set out in paragraphs 1, 2, 3 and 4 of this Article shall have the right to transfer part of such registration right to another organization or individual provided that the transferee organization/individual must pay a certain amount of money to the State or must satisfy other reasonable commercial conditions determined as compared to the commercial potential of such invention, industrial design or layout design.

Article 12. Detailed provisions on the form, contents, order and procedures for

processing applications for registration of industrial property rights

1. The Ministry of Science and Technology shall be responsible to make detailed provisions for the form and contents of various types of applications for registration of industrial property rights as set out from Articles 100 to 107 [of the Intellectual Property Law] and shall provide guidelines for the order and procedures to process such applications in accordance with Articles 108 to 119 of the Intellectual Property Law.
2. The Ministry of Science and Technology shall also be responsible for issuing forms of Protection titles and National Registers of Industrial Property, and for

of an application, the National Office of Intellectual Property shall issue a certificate of internationally registered mark bei

1. Owners of intellectual property rights include organizations and individuals owning industrial property objects as provided for in Article 121 of the Intellectual Property Law and authors of inventions, industrial designs and layout design as provided for in Article 122 of the Intellectual Property Law.
2. Where a protection title for an invention, industrial design, a layout design or a mark has been jointly granted for several organizations and individuals, the industrial property right shall belong to the common ownership of such organizations and individuals in the form of consolidated ownership.
3. Each of co-owners of an invention, industrial design, a layout design or a mark is entitled to independently use such invention, industrial design, layout design or mark without having to obtain approval from other co-owners, except where otherwise agreed between the co-owners.
4. Each of co-owners of an invention, industrial design, a layout design or a mark is only entitled to transfer his/her ownership right or to assign the right to use such invention, industrial design, layout design or mark to another person when it is approved by other co-owners, except where otherwise agreed between the co-owners. Any transfer of the ownership right or assignment of the right to use an invention, industrial design, layout design or a mark without approval from other co-owners shall be regarded invalid and the transfer and assignment contract in this case shall be regarded null and void.
5. Each of the co-owners shall be responsible to perform all the obligations arising from the use of his/her industrial property rights and the common obligations of other owners of industrial property rights.

Article 19. Provisions on the scope and limitations of industrial property rights

1. Authors of inventions, industrial designs and layout designs (to be jointly referred to as the “author”) shall have personal rights and property rights as set out in Articles 122.2, 122.3 and 135 of the Intellectual Property Law and as provided for in detail in Articles 21.2 and 21.3 of this Decree.

Owners of industrial property objects (to be jointly referred to as “owner”) shall have property rights as set out in Articles 123, 125 and 131 of the Intellectual Property Law.

2. The rights of authors and owners of inventions, industrial designs, layout designs, marks and geographical indications shall only exist for the term and within the scope of protection as provided for in Article 20 and Article 21 of this Decree.

Article 20. Scope of industrial property rights

The scope of protection of an invention, industrial design, a layout design, mark or a geographical indication which is determined in accordance with the scope of protection as stated in relevant protection title shall be used as the legal basis for determining the scope of industrial property rights. A holder of industrial property rights shall only be entitled to those rights within the scope of protection and subject to the limitations provided for

from Article 132 to Article 137 of the Intellectual Property Law.

Article 21.

- agencies or by another organization or individual as so assigned by them under a decision on compulsory licensing of the invention for and on behalf of the State.
2. Procedures for issuing a decision on compulsory licensing of an invention for and on behalf of the State shall be in accordance with the guidelines of the Ministry of Science and Technology and the sectoral management ministries.

Article 24. The remuneration price of the right to use inventions which is licensed under a decision on compulsory licensing

1. The remuneration price for the right to use an invention subject to compulsory licensing as set out in Article 146.1(d) of the Intellectual Property Law shall be determined in accordance with the economic value of the right to use subject to that licensing taking into account the following factors:
 - a) The price of transfer of the right to use such invention on a contractual basis.
 - b) The funds invested to create such invention where the portion of State budget funds (if any) must also be considered.
 - c) Profits from the use of such invention.
 - d) The remaining period of validity of the protection title.
 -) The necessity of the transfer of the right to use such invention.
2. The remuneration price referred to in paragraph 1 of this Article shall not exceed 5% of the net sales price of the products manufactured under that invention.
3. The agency authorized to issue a decision on compulsory licensing of the right to use an invention may set up a council of evaluation or call for expert opinions in order to determine the remuneration price referred to in paragraph 1 of this Article.

**Chapter IV
POLICIES AND MEASURES TO DEVELOP
INDUSTRIAL PROPERTY ACTIVITIES**

Article 25. Training and fostering personnel for industrial property activities

1. Training and fostering of personnel for industrial property activities are aimed at the following:
 - a) Improving capability of management, administration and assurance of enforceability of laws by State industrial property management agencies and other functional agencies in charge of dealing with acts of infringement upon industrial property rights as set out in Articles 11 and 200 of the Intellectual Property Law and Article 6 of this Decree.
 - b) Improving professionalism of organizations and individuals providing

industrial property consultancy, agency and protection services.

- c) Improving awareness and skills of individuals, organizations and businesses in administration, exploitation and protection of intellectual properties.
 - d) Ensuring qualified personnel to meet increasing requirements of the development process of national intellectual properties.
2. The following persons must go through training and fostering courses on industrial property:
- a) Specialists in charge of industrial property management at central level and in cities and provinces under central authority; industrial property examination (testing) officers; officers of the administrative agencies provided for in Articles 200.1 and 200.4 of the Intellectual Property Law who are directly assigned to deal with industrial property breaches and infringements; judges assigned to directly hear industrial property cases in accordance with Article 200.2 of the Intellectual Property Law;
 - b) Lawyers and industrial property agents as set out in Article 151.2 of the Intellectual Property Law.
3. Responsibility for industrial property training and fostering:
- a) The Ministry of Science and Technology shall be responsible for coordinating with the Ministry of Justice, the Ministry of Education and Training and the Ministry of the Interior to make detailed provisions for the contents of industrial property training and fostering programs provided for in paragraph 2 of this Article and framework programs for other subjects.
 - b) The Ministry of Justice shall be responsible for coordinating with the Ministry of Science and Technology in organizing training courses for judges and lawyers in accordance with the programs referred to in point (a) above.
 - c) The Ministry of Science and Technology shall be responsible for coordinating with relevant ministries and sectors in organizing industrial property training courses for of

Article 26. Assurance of industrial property information

1. The system of industrial property information consists of all relevant information about industrial property objects being protected in Vietnam, selective information either in accordance with the objectives or topics relating to foreign industrial property objects which is classified and arranged in a suitable and convenient order to facilitate the searching (reference), distribution and using activities.
2. The National Office of Intellectual Property shall be responsible for setting up and managing industrial property information storage, developing classification and searching instruments, providing guidelines for how to research and use domestic and foreign industrial property information; organizing the supply of information in a timely and accurate manner, and opening the information storage to meet the information using demand to service research, development and business activities.
3. The Ministry of Science and Technology shall be responsible for making provisions to compel references to information about invention as part of the preparation of a research or a project using State budget funds and consequently State budget funds shall not be allocated to any research or project that fails to make references to information about inventions or that is the same as any existing invention information.
4. Industrial property information services shall be regarded as a type of intellectual property services and shall be entitled to tax incentives in accordance with the implementing guidelines of the Law on Science and Technology.

Article 27. Accounting for the costs and values relating to industrial property

1. The costs incurred for the following purposes shall be regarded as reasonable expenses of an enterprise:
 - a) Cost of creating an invention, industrial design or a layout design; cost of designing the sample of a mark or the logo of the enterprise.
 - b) Cost of completion of procedures for registration, maintenance and renewal of the right to inventions, industrial designs, layout designs, marks or geographical indications, including completion of those procedures overseas.
 - c) Cost of taking appropriate measures to protect the secrecy of business secrets or to protect the rights to an invention, industrial design, layout design, mark or geographical indication.
 - d) Cost of making payment of remuneration to the author.
 -) Cost of purchasing the ownership right or the right to use an invention, industrial design, a layout design, a mark or business secret.

2. Any invention, industrial design, layout design, mark, trade name, business secret

Article 33. Implementation

1. The Minister of Ministry of Science and Technology shall provide guidelines for implementing this Decree
2. Ministers, heads of Ministries, ministerial-level agencies, Government agencies and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementing this Decree.
3. This Decree comes into effect fifteen (15) days after the date it is published in the Official Gazette.

FOR AND ON BEHALF OF THE GOVERNMENT

THE PRIME MINISTER