

**THE GOVERNMENT**  
No103/2006/ND - CP

**THE SOCIALIST REPUBLIC OF VIETNAM**  
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**DECREE**

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**THE GOVERNMENT**

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

Pursuant to the Civil Code of 14 June 2005;

Pursuant to the Intellectual Property Law of 29 November 2005;

At the request of the Minister of Science and Technology;

**DECREES**

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**GENERAL PROVISIONS**

**Art. 1.** Hàng

This Decree makes detailed provisions and

- c) The Agreement on Protection of Intellectual Property Rights and Cooperation in the field of intellectual property between Vietnam and Switzerland of 1999.
- d) The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of 1994, to be applied from the date of accession of Vietnam to the World Trade Organization (WTO).
- (đ) Other international treaties concerning the protection of industrial property rights to which Vietnam is party.

### **Article 13. Responsibilities**



1. The Ministry of Science and Technology shall have the following responsibilities in state administration of industrial property:
  - (a) Formulation and organization of the implementation of strategies of and policies on industrial property rights protection;
  - (b) Promulgation, submission to the competent agency for promulgation of and organization of the implementation of legal instruments on industrial property;
  - (c) Organization of a system of agencies performing the function of state administration of industrial property
  - (d) Providing operational instructions and organizing professional and operational training courses on industrial property;
  - (đ) Organization of the establishment of industrial property rights; registration of industrial property rights transfer contracts and other procedures relating to protection titles for industrial property rights;
  - (e) Enforcement of the right of requesting compulsory licensing of inventions in accordance with Article 147 of the Intellectual Property Law;
  - (g) Taking lead or coordinating in the implementation of various measures to protect legitimate rights and interest of organizations, individuals, the State and of the society in the industrial property field;
  - (h) Management of industrial property assessment activities; issuing of Industrial Property Assessor Cards;
  - (i) Inspection and control of the observance of industrial property legislation;

- (l) Organization of activities to educate, disseminate and popularize legal knowledge, policies and laws on industrial property;
- m) Taking lead and coordinating with the Ministry of Education and Training and the Ministry of Justice to develop curricula and organizing training and enhancement of knowledge of the law on industrial property;
- (n) Management of industrial property agency activities; issue of practicing certificates of industrial property agents;
- (o) Examination of qualifications and operational skills; issue of practicing certificates and management of operations of business organizations and individuals practicing industrial property agency practice;
- (oo) International cooperation on industrial property; proposal of ways to settle disputes between Vietnam and other nations regarding industrial properties.

The National Office of Intellectual Property under the Ministry of Science and Technology shall be the agency in charge of assisting the Minister of Science and Technology in carrying out the function of State administration of industrial property. The Minister of Science and Technology shall stipulate in details the functions, duties and powers of the National Office of Intellectual Property.

2. People's Committees of provinces and cities under central authority shall have the following responsibilities for State management of industrial property in their localities:
- a) Organization of the implementation of policies and laws on industrial property;
  - b) Development, issuance, and organization of the implementation of local regulations of the localities on industrial properties;
  - c) Organization of the administration mechanism of industrial property activities in the localities and implementation of various measures to improve the efficiency of that mechanism;
  - d) Organization of the dissemination and popularization of legal knowledge and policies concerning industrial property; taking of measures to enhance industrial property.
  - (đ) Providing guidelines and assisting organizations and individuals to complete procedures relating to industrial property.
  - (e) Coordinating with relevant agencies to protect industrial property rights and deal with breaches of industrial property legislation.

- (g) Inspection and control of compliance with the law on industrial property, settlement of complaints and denunciations relating to industrial property in the localities;
- (h) Management of geographical indications pertaining to their localities; and
- (i) International cooperation in industrial property in the localities.

Departments of Science and Technology under People's Committees of provinces and cities under central management shall have the responsibility to assist the People's Committees to perform State management of industrial property in their localities. People's Committees of provinces and cities under central management shall stipulate

without completing registration procedures.

4. Industrial property rights to business secrets shall be esta

such invention, industrial design or layout design shall belong to the State. The organization or agency 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. Where 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 organization or agency 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. Where 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 be named as owner of the Protection Titles on behalf of the State and perform management of industrial property rights over such objects, and have the right to transfer the part of registration right of the State to another organization or individual provided that the transferee organization/individual must pay or provide the State an amount of money or other reasonable commercial conditions determined as comparable to the commercial potential of such invention, industrial design or layout design.

**Art 10. Priority**



The priority right of applications for registration of inventions, industrial designs and marks provided for in Article 91 of the Intellectual Property Law shall be applied as follows:

1. Where the applicant for registration of an invention, industrial design or a mark wishes to enjoy the priority right under the Paris Convention, his/her claim for such priority right shall be accepted if the following conditions are met:
  - a) The applicant is a national of Vietnam or of a member country of the Paris Convention or is a resident of or has a business/production establishment in Vietnam or in that member country of the Paris Convention;
  - b) The first application has been filed in Vietnam or in a member country of the Paris Convention and such application contains part(s) corresponding to the request for the priority right of the application for registration of invention, industrial design or mark;

- c) The application for registration is filed within the following time limits counted from the filing date of the first application: six (6) months for the application for registration of industrial design or mark ; twelve (12) months for the application for registration of invention;
  - d) In the application for registration of invention, industrial design and mark, the applicant clearly expresses his/her claims for priority right and provides a copy of the first application as referred to in point (b) of this paragraph, if the application was filed abroad, which must include certification by the Office that received the first application;
  - d) Fees for claiming priority rights have been paid in full.
2. Where the applicant for registration of an invention, industrial design or a mark wishes to enjoy priority right under another international treaty, his/her claim for such priority right shall be accepted if all the conditions for the priority right set out in that international treaty are satisfied.

**Art 1. II**

**III**

1. In this Article, “the PCT application” shall be construed as an application for registration of an invention which is filed under the PCT Treaty, including:
- a) Applications with request for protection in Vietnam, filed in any member countries of the PCT Treaty, including Vietnam (hereinafter referred to as PCT Application designating or selecting Vietnam).
  - b) Applications filed in Vietnam with request for protection in any member countries of the PCT Treaty, including Vietnam (hereinafter referred to as PCT Application originating from Vietnam)..
2. A PCT application designating or selecting

**Art 2. IIP**

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1. In this Article, “the Madrid Application” shall be construed as an international application for registration of a mark filed under the Madrid Agreement or the Madrid Protocol, including:
  - a) Applications requesting for protection of marks in Vietnam, originating from other member countries of the Madrid Agreement or the Madrid Protocol, hereinafter referred to as Madrid Applications designating Vietnam.
  - b) Applications requesting for protection of marks in other member countries of the Madrid Agreement or the Madrid Protocol which are filed in Vietnam, hereinafter referred to as Madrid Applications originating from Vietnam.
2. After being published by the International Bureau of the World Intellectual Property Organization (WIPO), a Madrid Application designating Vietnam shall be examined as to substance like any application filed under national procedure.



individuals of other member countries of such treaty shall be recognized and protected in Vietnam

Industrial property rights shall be protected in accordance with the scope and term of protection pursuant to the provisions of the treaty without having to complete registration procedures as provided for by the Intellectual Property Law.

2. The Ministry of Science and Technology shall announce all the necessary information relevant to the industrial property rights being recognized and protected in Vietnam

date of the term for settling the first instance appeal as referred to in paragraph 5 of this Article if by that date the first instance appeal is not dealt with or from the date the appellant receives or knows about the first appeal settlement decision.

5. Within 10 days from the date of receipt of the petition relating to issuance, amendments, termination, cancellation or





nutrition for the people or other urgent needs of the society are satisfied with imported products, or products made by the parties receiving the rights to use the inventions under production contract, the person holding exclusive right to use the invention shall not be required to perform the obligation of producing the protected products or of applying the protected process stipulated in paragraph 1 of this Article.

**Art 23. Obligations**

1. When there arise the demands for national defense, security, disease prevention and treatment, nutrition for the people and other urgent

2. The remuneration price shall not exceed 5% of the net sales price of the products



fees and charges.

5. An organization conducting business of industrial property representation service shall have its name removed from the National Register for industrial property agents and such removal shall be published in the Industrial property Official Gazette in the following cases:

a) The organization conducting business of industrial property representation service gives up business of industrial property representation service;

b) The organisation conducting business of industrial property representation service no longer fulfill the conditions provided for in Article 154 of



4. The Ministry of Education and Training shall take the lead and coordinate with the Ministry of Justice and the Ministry of Science and Technology in developing training programs and organizing the industrial property training in education institutions.

**Article 31. Action**

1. The system of industrial property informat



The State encourages and assists activities of technology creation by the following measures:

1. To assist various technical creative events.
2. To commend and reward; popularize creative experiences and methods, and typical examples of creative labor.
3. To support activities of establishment and protection of industrial property rights to creative achievements.

## **CVII IMPLEMENTATION PROVISIONS**

### **AB6. Title**

1. The industrial property registration applications filed with the National Office of Intellectual Property before 1 January 2006 shall be further processed in accordance with the 1995 Civil Code and its implementing documents.
2. The industrial property registration applications filed with the National Office of Intellectual Property after 1 January 2006 and before 1 July 2006 shall also be processed in accordance with the 1995 Civil Code and its implementing documents, specifically:
  - a) Applications for registration of inventions which request for the grant of a utility solution patent shall be processed as an application for registration of utility solutions.
  - b) Applications for registration of geographical indications shall be processed as application for registration of appellations of origin.
3. From 1 January 2006 to 30 June 2006, the rights and obligations under a protection title issued under the 1995 Civil Code and the 2005 Civil Code shall be further valid under the 2005 Civil Code and those provisions of the implementing documents of the 1995 Civil Code which are not contrary to the 2005 Civil Code.
4. Within 1 year since the effective date of this Decree, organizations or individuals practicing industrial property agency services lawfully under the 1995 Civil Code and its implementing documents shall be entitled to continue the operations as organizations or individuals satisfying the business conditions and practicing conditions stipulated in Articles 154 and 155 of the Intellectual Property Law.

### **AB7. VIII**

This Decree shall take effect after 15 days from the date of publication in the Official Gazette.

All previous provisions that are contrary to the provisions hereof shall be repealed.

### **AB8. R9**

1. The Minister of Science and Technology shall provide guidelines for implementing this Decree

2. Ministers, Heads of ministerial-level agencies, Heads of Government agencies and Heads of People's Committees of provinces and cities under central authority shall be responsible for implementing this Decree.

**FOR AND ON BEHALF OF THE GOVERNMENT**

**THE PRIME MINISTER**

**Ngũgĩ**

(Signed and sealed)