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Hanoi, 5 November 2003

**CIRCULAR**  
**PROVIDING GUIDELINES FOR IMPLEMENTATION OF**  
**PROCEDURES FOR ESTABLISHMENT OF INDUSTRIAL**  
**PROPERTY RIGHTS WITH RESPECT TO INDUSTRIAL DESIGNS**

*Pursuant to Decree No. 54-2003-ND-CP of the Government dated 19 May 2003 on the functions, duties, powers and organizational structure of the Ministry of Science & Technology;*

*Pursuant to Decree No. 63-CP of the Government dated 24 October 1996 as amended by Decree No. 06-2001-ND-CP of the Government dated 1 February 2001 providing detailed regulations on industrial property;*

*The Ministry of Science & Technology hereby provides guidelines for conducting procedures on formulation, submission and examination of applications for certificates of protection with respect to industrial designs; and for procedures on issuance, amendment, extension, suspension and rescission of validity of certificates of protection with respect to industrial designs.*

**CHAPTER I**

**General Provisions**

1. Interpretation of terms:

1.1 In this Circular the following terms shall be construed as follows:

(a) "Decree" refers to Decree No. 63-CP of the Government dated 24 October 1996 as amended by Decree No. 06-2001-ND-CP of the Government dated 1 February 2001 providing detailed regulations on industrial property;

(b) "Application" refers to applications for issuance of a patent for an industrial design ;

(c) "Applicant" means the underwriter in whose name the Application is submitted;

(d) "Procedures for registration of an industrial design" means procedures for establishment of industrial ownership of an industrial design and other related procedures.

1.2 Other terms shall have the same meanings as in the Decree.

2. Certification of documents:

## 2.1 Certification of original documents:

During the process of conducting procedures for registration of an industrial design, all original documents of a transaction must be certified by the underwriter which gives its name to such document in accordance with the following provisions:

- (a) If the underwriter who gives his/her name to the document is an individual, the document must bear the full name and signature of such individual or of the authorized representative of such individual;
- (b) If the underwriter who gives its name to the document is an organization required to use a seal, then the signature of the authorized representative of the underwriter must be sealed.

## 2.2 Certification of copies:

- (a) All copy documents produced by any method of copying must be certified to be true copies of the original as stipulated in clause (b) below before they shall be permitted to be used as official documents when conducting procedures for registration of an industrial design;
- (b) A document shall be recognized as a true copy of the original where such copy is certified as a true copy by one of the following bodies: Public notary, people's committee or competent authority, underwriter (all the underwriters) giving its/their name to the original document or the proxy of the underwriter/underwriters. If the copy consists of many pages, each page must be certified or the pages must be affixed with overlapping seals.

## 2.3 Certification of translations:

- (a) All Vietnamese translations of documents must be certified to be correctly translated from the original as stipulated in clause (b) below before they shall be permitted to be used as official documents when conducting procedures for registration of an industrial design;
- (b) Certification of translations may be carried out by one of the following methods:
  - Notarization;
  - Certification by the underwriter (all underwriters) giving its/their name to the original document or by the proxy of the said underwriter/s;
  - Recognition by the same body authorized to use the translation during the process of conducting the relevant procedures.

## 3. Persons conducting procedures for registration of an industrial design in the name of the underwriter:

3.1 Only the persons stipulated in clauses 3.2 and 3.3 below shall be permitted to conduct procedures in the name of the underwriter for registration of an industrial design with the National Office of Industrial Property and other authorized bodies.

The National Office of Industrial Property and other authorized bodies may only transact with the above mentioned persons and such transactions shall be deemed to be official transactions with underwriters.

3.2 Where underwriters are entitled to directly file applications and conduct the related procedures stipulated in articles 15.2 and 15.3(a) of the Decree, the following persons shall be permitted to conduct procedures in the name of an underwriter to carry out the work stipulated in clause 3.1 of this Circular:

- (a) The individual or the legal representative of the individual (if the underwriter is an individual);
- (b) The legal representative of the underwriter; an individual who is a member of the underwriter and entrusted with representation by the legal representative of the underwriter; the head of the representative office or branch of the underwriter entrusted with representation by the legal representative of the underwriter (applicable to an underwriter which is a legal entity or to other underwriters);
- (c) The head of a representative office in Vietnam of a foreign underwriter entrusted with representation by that underwriter; the legal representative of an enterprise with one hundred (100) per cent foreign owned capital established in Vietnam of a foreign underwriter entrusted with representation by that underwriter;
- (d) Any person satisfying one of the conditions stated in clauses (a), (b) and (c) above who is one of the individuals or one of the legal entities or other underwriters if the underwriter consists of multiple individuals, legal entities or other underwriters and if that person is entrusted with representation by all individuals, legal entities or other underwriters.

3.3 Where underwriters are only entitled to file applications and conduct related procedures through an authorized industrial property representative service organization as stipulated in article 15.3(b) of the Decree, as well as where other underwriters conduct the above mentioned procedures through an authorized industrial property representative service organization, only the legal representative or the proxy pursuant to a power of attorney of the industrial property representative service organization which has power of attorney from the underwriter shall be permitted to carry out the work stipulated in clause 3.1 of this Circular.

4. Authorization for implementation of procedures for registration of an industrial design:

4.1 The provision of authorization and the exercise of authorization to conduct procedures for registration of an industrial design must comply with the provisions on civil contracts and on contracts of authorization in the Civil Code and with the provisions in this Circular.

4.2 Authorizations for implementation of procedures for registration of an industrial design shall be made in writing (power of attorney) and shall include the following main particulars:

- (a) Full name and address of authorizing party;
- (b) Full name and address of authorized party;

- (c) Scope of authorization (tasks to be implemented by authorized party in the name of authorizing party);
- (d) Date on which power of attorney is granted;
- (e) Signature and/or seal of the party granting the power of attorney;
- (f) Duration of authorization.

If a power of attorney does not specify any duration of authorization it shall be deemed to be valid for an indefinite term and its validity shall only be terminated when the authorizing party makes a declaration of termination of authorization.

4.3 The authorized party must be an individual entitled to implement the procedures for registration of an industrial design as stipulated in clause 3.2 of this Circular, or an industrial property representative service organization.

4.4 The authorized party must submit the original power of attorney when conducting the procedures for registration of an industrial design. All adjustments to the scope of authorization and early termination of authorization shall be notified in writing to the National Office of Industrial Property and other authorized bodies, and shall only take effect as from the date the body receives such notice.

4.5 If the scope of authorization in a power of attorney includes tasks relating to a number of different procedures and the original power of attorney has already been submitted to the National Office of Industrial Property, then when carrying out subsequent procedures the authorized party must specify the number and date of the application file which contained the original power of attorney.

## **CHAPTER II**

### **Applications and Dealing with Applications**

#### **Section I**

#### **Applications**

5. Requirements on the form of applications:

5.1 Applications shall satisfy the following formal requirements:

- (a) All application documents must be prepared in Vietnamese, except for those which may be in other languages pursuant to clauses 5.2 and 5.3 of this Circular;
- (b) All application documents must be presented in portrait orientation (although pictures of drawings and photos of an industrial design may be presented in landscape [i.e. A3] orientation) on single-sided paper of A4 size (210mm x 297mm) with twenty (20) millimetre wide margins from each of the four edges, except for supporting documents the originals of which are not included in the Application.

(c) For documents required to be prepared in accordance with stipulated sample forms, it shall be mandatory to use such forms and to complete the appropriate items in the forms;

(d) For documents consisting of more than one page, each page shall be numbered consecutively using Arabic numbers;

(e) Documents must be typed or printed clearly and neatly in non-fading ink without any erasure or correction;

(f) Expressions used in an application must be commonly used expressions; and all symbols, units of measurement and electronic fonts used in an Application must comply with Vietnamese standards;

(g) An Application may enclose subsidiary data being an object containing an electronic file of some or all of the contents of the Application documents, presented in accordance with the regulations of the National Office of Industrial Property on the form of data.

5.2 The following documents may be prepared in languages other than Vietnamese but must be translated into Vietnamese:

(a) Power of attorney;

(b) Document certifying the lawful right to file an Application if the Applicant is the beneficiary of a right to file the application from another person (certificate of inheritance, certificate or agreement of transfer of right to file the application including transfer of an application already filed, contract for work assignment or labour agreement, and so forth);

(c) Documents evidencing basis of entitlement to priority right (certification from the body which received the application in the case of a copy application or first applications; certificate of exhibition display, and so forth; certificate of transfer of priority right if such right was received from another person).

5.3 The following documents may be prepared in languages other than Vietnamese but must be translated into Vietnamese if the National Office of Industrial Property so requires:

(a) Copy first application as evidence of the basis of entitlement to priority right;

(b) Other documents which support the Application.

6. Requirements on the content of Applications:

6.1 An Application must ensure uniformity as stipulated in article 11.2 of the Decree.

Each Application may only request issuance of a Certificate of exclusive right to one industrial design for one product or one set of products and may include a number of different plans of that industrial design.

An Applicant may request protection in different Applications of different plans of one industrial design, on condition that all subsequently filed Applications must record instructions that the industrial design is a plan of the industrial design in the previously filed Application, and the number and filing date of the previously filed Application must also be recorded. If the said instructions are missing, the industrial design in any subsequently filed Application shall be deemed not to be new because it is not basically different from the industrial design/s in the previously filed Application/s. If the said instructions are provided, the Applicant shall be issued with only one Certificate of protection which shall include all the plans of the industrial design which were stated in the relevant Applications.

In this clause, the following words shall be construed as follows:

- Product means an object, instrument, item of equipment or a facility and so forth which is produced by industrial or handicraft methods, and with a clear structure and function and which can circulate independently;
- Set of products means a collection of from two or more independent products normally used together or aimed at together achieving the one objective;
- Different plans of the one industrial design means versions of an industrial design expressed in the one product or set of products and not basically different from each other.

#### 6.2 Applications must include the following documents:

- (a) Declaration requesting issuance of a certificate of exclusive right to an industrial design, prepared in accordance with the sample form (Declaration) in the appendix to this Circular;
- (b) Description of the industrial design (hereinafter referred to as the Description);
- (c) Five sets of photos or drawings of the industrial design;
- (d) Power of attorney (if the application is filed by a representative);
- (e) Copy of first application or first applications or document certifying the exhibition display if the Application requests enjoyment of priority right in accordance with an international treaty;
- (f) Voucher proving payment of application filing fee, application declaration fee and fee on request for enjoyment of priority right (if any such request), fee for examination of contents and fee for classification of the industrial design (if the Applicant has not made the classification).

6.3 The documents listed in clause 6.2 above shall be submitted at the same time. The following particular documents may be submitted within three months of the filing of an Application:

- (a) The Vietnamese translation of the document listed in clause 6.2(b) where the English version of such document was included in the Application;

(b) The original of the document listed in clause 6.2(d), including the Vietnamese translation, where a copy document was included in the Application;

(c) The original of the document listed in clause 6.2(e), including the Vietnamese translation, where the National Office of Industrial Property so requires.

6.4 If there are grounds for doubting the reliability of information in the Application, the National Office of Industrial Property shall have the right to require the Applicant to file, within one month of the date of such requirement, documents verifying such information, and in particular:

(a) Documents verifying the lawful right to file an Application if the Applicant has received the right to file the Application from another person (certificate of right of inheritance, certificate or agreement of transfer of right to file the Application; contract for work assignment or labour agreement, and so forth);

(b) Documents verifying the lawful ownership of trademarks, commercial names and so forth if the industrial design includes such signs.

6.5 The Declaration shall specify the index for classification of the industrial design to be protected in accordance with the international index for classification of industrial designs (in accordance with the Locarno Agreement). If the Applicant has not made a classification or has made an inaccurate classification then the National Office of Industrial Property shall make a classification and the Applicant shall pay a fee for classification services.

6.6 The Description:

(a) The Description shall include the following contents:

- Name of products bearing the industrial design;
- Field in which the products bearing the industrial design is used;
- The closest known industrial designs which are not very different from the industrial design for which protection is requested;
- List of photos or drawings;
- Descriptive section of the industrial design (hereinafter referred to as the Descriptive section);
- Request for protection.

(b) The Descriptive section shall present all the special shaping features which have been created and which express the nature of the industrial design for which protection is requested, showing the special shaping features newly created by the author and their differences from the closest known industrial designs which are not very different from the industrial design for which protection is requested, and the Descriptive section must be in conformity with the photos or drawings.

If the industrial design which needs to be protected includes a number of plans then the Descriptive section must present them fully and show their basic differences from each other.

If the industrial design which needs to be protected is an industrial design for a set of products, the Descriptive section must fully present the design for each product within that set.

(c) The Request for protection shall be used to determine the scope (quantity) of protection of the industrial design. The Request for protection must present clearly the shaping features which have been created and which need to be protected, namely the features which are new and which are different from other known industrial designs.

The shaping features which have been created and which need to be protected shall be presented in the following order: the cubic features and/or the linear features and/or the correlation between the above-mentioned features and/or colours (if any).

6.7 The sets of photos or drawings must fully express the shaping features of the industrial design in conformity with the Descriptive section and the Request for protection, and shall comply with the following provisions:

(a) The photos and drawings must be clear and distinct, not mixing the products bearing the industrial design to be protected with other products.

(b) All photos and drawings shall be prepared to the same scale. The dimensions of each photo or drawing shall not be less than ninety (90) millimetres by (x) one hundred and twenty (120) millimetres and shall not exceed two hundred and ten (210) millimetres by (x) two hundred and ninety seven (297) millimetres.

(c) Each photo or drawing must be presented on or attached to white paper of A4 size (210mm x 297mm) and pages must be numbered consecutively for compliance with the provisions in clause 6.6(a) above.

(d) The photos or drawings must contain an image of the perspective of the products bearing the industrial design for which protection is requested.

(e) Depending on the Request for protection, there must be an additional photo or drawing of the elevation and sectional planes which is adequate to show clearly the new shaping features of the industrial design which needs to be protected.

(f) Each plan/project of the industrial design for which protection is requested must have a photo or drawing showing the features which are different from basic plans.

(g) With respect to products which have a cover or which can be closed (such as cabinets, suitcases and so forth), there must be an image of the product when it is open.

(h) With respect to a set of products, there must also be an image of the perspective of the set of products as well as of the elevation of each product in the set.

6.8 The National Office of Industrial Property shall provide detailed guidelines on the Description and on the set of photos/drawings of industrial designs.

## **Section 2**

### **Filing and Accepting Applications**

#### **7. Filing applications:**

Applications may be filed at the National Office of Industrial Property or at any other locations for receipt of Applications established by the National Office of Industrial Property. Applications may also be sent by registered post to the above locations.

#### **8. Accepting applications:**

8.1 After receiving an Application, the National Office of Industrial Property shall carry out the following:

- (a) Check the list of documents stated in the Declaration;
- (b) Note any differences between the list of documents stated in the Declaration and the actual number of documents in the Application;
- (c) Carry out preliminary examination of the Application to make a conclusion on acceptance or rejection in accordance with clause 8.2 below, and if the Application is accepted then seal the Declaration with certification of the date of filing of the Application;
- (d) Issue the Applicant with a receipt for the application sealed with certification of the date of filing of the application, the number of the application and the result of checking the list of documents, the receipt to bear the full name and signature of the staff member accepting the Application.

8.2 The National Office of Industrial Property shall not accept an Application which lacks one of the following mandatory documents:

- (a) Declaration containing information being the name and address of the applicant;
- (b) Description containing Request for protection;
- (c) Set of photos or drawings on the industrial design;
- (d) Voucher proving payment of application filing fee.

8.3 In a case where an Application is not accepted, the National Office of Industrial Property shall, within a time-limit of 15 days from the date of receipt of the Application, notify the applicant in writing of the reasons therefore and fix a time-limit of 2 months from the date of the notice for the Applicant to rectify deficiencies.

If the Applicant in fact files all the documents stipulated in clause 8.2 above within the stipulated 2 months, the Application shall be deemed accepted on the date all such documents are filed.

In a case where an Application is not accepted, the National Office of Industrial Property need not return the Application documents to the Applicant, but shall refund fees paid in accordance with the procedures on refund of fees set out in this Circular.

### **Section 3**

#### **Examination of Form of Applications**

9. Objective and contents of examination of form:

Examination of the form of an Application means an inspection of compliance with the provisions on the form of an Application in order to reach a conclusion on whether or not the Application is deemed proper.

A proper Application shall be considered for acceptance and an improper Application shall be refused (not considered for acceptance).

10. Proper Application:

10.1 An Application shall be deemed proper if it does not fall within one of the following cases:

- (a) The application is prepared in languages other than Vietnamese, except for the cases stipulated in clauses 5.2 and 5.3 of this Circular;
- (b) There is insufficient information in the Declaration about the author, the Applicant or the representative, or the Applicant or representative has not signed and/or sealed [the Declaration];
- (c) There are grounds for confirming that the Applicant does not have the right to file an application;
- (d) The Application is filed inconsistently with the provisions in article 15 of the Decree;
- (e) The Applicant fails, within the time-limit stipulated in clause 6.2 of this Circular, to submit the Vietnamese version of the Description which was prepared in English;
- (f) The power of attorney is not filed within the time-limit stipulated in clause 6.2 of this Circular;

(g) The Application has the deficiencies stipulated in clause 11 below which affect its validity, and the Applicant fails to rectify or satisfactorily rectify the deficiencies despite a request from the National Office of Industrial Property to do so;

(h) There are grounds for immediate confirmation that the object stated in the Application is clearly an object not to be protected by the State as stipulated in article 787 of the Civil Code and in article 5.3 of the Decree.

10.2 With respect to an Application with a number of objects, if the Application falls within the cases stipulated in clauses 10.1(h), 11.1(a), 11.1(b) and 11.1(e) of this Circular and the deficiencies do not relate to all the objects in the Application then it shall be deemed partially improper (applicable to the deficient objects) but proper with respect to the remaining objects.

11. Dealing with deficiencies of Applications at the stage of examination of form:

11.1 The National Office of Industrial Property shall notify the Applicant if the Application has the following deficiencies:

(a) There are insufficient copies of any one type of mandatory document.

(b) The application lacks uniformity;

(c) The application fails to satisfy the requirements on the form of presentation;

(d) The information about the Applicant in different documents is inconsistent or has been erased or has not been correctly certified in accordance with the regulations;

(e) The fees prescribed in clause 6.2(f) above have not been paid in full.

11.2 The Applicant must rectify these deficiencies within a time-limit of 2 months from the date of the notice.

12. Determination of the date of filing an application:

The date of filing an Application shall be the date on which the Application reached the National Office of Industrial Property as indicated by the receipt seal on the Declaration.

13. Determination of priority date:

13.1 If an Application does not include a request for priority right, or if an Application contains a request for priority right but the National Office of Industrial Property does not approve the request, the priority date shall be the date of filing the Application.

13.2 If an Application includes a request for priority right, the priority date (or priority dates) shall be the date stated in the above-mentioned request and approved by the National Office of Industrial Property.

14. Notice of approval of Application:

If an Application is deemed proper, the National Office of Industrial Property shall send the applicant a notice approving the Application as proper. The notice shall specify the name and address of the Applicant, the name of the industrial property representative service organization (if the application is filed through such organization), the name of the object stated in the Application, the date of filing the application and the number of the application, and the priority date of the Application. The notice shall also specify reasons if a request for priority right is not approved.

15. Refusal to approve an Application:

If an Application is deemed improper, the National Office of Industrial Property shall send the applicant a notice of intention to refuse approval of the application. The notice shall specify the deficiencies which result in the Application being deemed improper, and shall fix a time-limit of 2 months from the date of the notice for the Applicant to provide its opinion on the intention to refuse approval of the Application.

If the Applicant does not provide an opinion on the intention to refuse approval of the application or provides an unmeritorious opinion, the National Office of Industrial Property shall issue an official notice of refusal to approve the application and on the request of the Applicant shall refund all fees paid after the examination of form.

16. Time-limit for examination of form of Applications:

16.1 The time-limit for examination of form shall be one month from the date of filing an application. In the case of an Application where additional documents as stipulated in clause 6.3 of this Circular are filed, the time-limit for examination of form shall be one month calculated from the date of filing such additional documents.

16.2 If during the course of examination of form of an Application the Applicant, either on its own initiative or at the request of the National Office of Industrial Property, amends or supplements documents, the time-limit for examination of form shall extend an extra 15 days. If an Application is amended or supplemented at the request of the National Office of Industrial Property, the period which was reserved for the Applicant to amend or supplement documents shall not be included in the time-limit for examination of form.

## **Section 4**

### **Announcement of Applications**

17. Announcement of proper Applications:

Any Application which has been approved as proper shall be announced by the National Office of Industrial Property in the Official Industrial Property Gazette, and the Applicant must pay the fee for announcement of the Application.

18. Time-limit for announcement of Applications:

Applications shall be announced in the second month from the date they are approved as proper.

19. Contents of announcements of Applications:

The information relating to proper Applications to be announced in the Official Gazette shall comprise: all information about a proper Application set out in the Notice of approval of the application as proper, information about transfer of an Application, information about division of an Application and so forth, and one or more photos or drawings of the industrial design.

20. Access to detailed information about proper Applications:

Any person may have access to detailed information about the nature of objects stated in Applications, or may request the National Office of Industrial Property to supply such information and the person making the request shall pay a fee in accordance with the regulations.

## **Section 5**

### **Examination of Contents of Applications**

21. Purpose of examination of contents:

The purpose of examination of the contents of an Application shall be to evaluate the possibility of protection of the object stated in the Application in accordance with protection criteria and to determine the respective scope (quantity) of protection.

22. Use of results of information from references during the process of an examination of contents:

22.1 When conducting an examination of contents, the National Office of Industrial Property shall refer to information in the minimum information sources stipulated in clause 33.2 of this Circular in order to make comparisons and assess the object stated in an Application in accordance with protection criteria.

22.2 When conducting an examination of contents of an Application with priority right, the National Office of Industrial Property may use results of information from references and results of examination of the corresponding Application filed overseas. The applicant may provide the National Office of Industrial Property with the following information to assist an examination of contents:

(a) Results of information from references or of examination of the Application filed overseas for the object stated in an Application;

(b) Copy Patent or other Certificate of protection already issued on the basis of the Application filed overseas for the object stated in the Application;

23. Consideration of opinion of third parties:

During the process of conducting an examination of contents of an Application, the National Office of Industrial Property must consider the opinion of third parties (if any) which support or oppose the issuance of a Certificate of protection. The National Office of Industrial Property must notify any third party of whether or not the third party's opinion is accepted, and must specify reasons if the opinion is not accepted.

#### 24. Requests to correct formal deficiencies and to explain contents of Applications:

24.1 During the process of conducting an examination of contents of an Application, the National Office of Industrial Property shall have the right to require the Applicant to explain contents of Application documents or to correct formal deficiencies of the Application. If the Applicant fails to satisfy the request, the Application shall be deemed to have been withdrawn and consideration of the Application shall discontinue.

24.2 The National Office of Industrial Property shall not require the Applicant to provide information beyond the scope of the nature of the object stated in the Application, and in particular shall not require the provision of information which the Applicant wishes to remain confidential.

24.3 Any amendment or addition to Application documents must be made by the Applicant himself. The National Office of Industrial Property shall not be permitted to [itself] make the above-mentioned amendments or additions.

#### 25. Suspension of examination of contents:

25.1 An examination of contents shall be suspended in the following circumstances:

(a) The Application does not clearly express the nature of the object: the documents concerning the nature of the object such as the Description, Request for protection and the Drawings (or photos) lack information to the extent that it is impossible to define the nature of the object, or the information about the nature of the object is inconsistent to the extent that it is impossible to define the object;

(b) The object is inconsistent with the request for issuance of a patent for an industrial design, or the object is an object which is not protected by the State as stipulated in article 787 of the Civil Code and in article 5.3 of the Decree;

(c) The Applicant requests suspension of examination of contents or provides a declaration of withdrawal of the Application.

25.2 The National Office of Industrial Property must notify an Applicant of any suspension of examination of contents and the reasons for such suspension by conducting the same procedures which apply to notice of results of an examination of contents set out in clause 28 of this Circular (unless it was the Applicant who requested the suspension).

#### 26. Complaints about suspensions; re-establishment of an examination of contents:

26.1 An Applicant shall have the right to oppose the reasons for suspension of an examination of contents and the National Office of Industrial Property shall deal with the Applicant's complaint in accordance with the procedures in section 3 of Chapter 4 of this Circular.

26.2 If the result of dealing with the Applicant's opinion shows that the opinion is legitimate, the National Office of Industrial Property shall re-establish the examination of contents and in such a case the National Office of Industrial Property shall not be permitted to extend the time-limit for the examination of contents.

27. Contents of and order for assessment of objects in accordance with protection conditions (criteria):

27.1 The contents of an assessment of an object in accordance with protection criteria shall be a determination of whether or not the object stated in the Application is consistent with the request for the issuance of a Patent for the industrial design, and if consistent then the object shall be assessed pursuant to each protection criteria in turn.

27.2 The assessment in accordance with protection criteria shall be conducted for each object in turn (if the Application contains a number of objects and uniformity has been ensured), and each object shall be assessed pursuant to each protection criteria in turn as stipulated in detail in Chapter 3 of this Circular.

An assessment shall be conducted of each product (if the Application refers to a set of products), and where an Application refers to a number of plans then the assessment shall commence from basic plans.

27.3 The assessment of each object shall be terminated if:

(a) There are grounds for concluding an object does not satisfy one of the protection criteria (in which case the examination of contents shall terminate with the conclusion that the object does not satisfy the protection criteria).

(b) There are no grounds for concluding an object does not satisfy any one of the protection criteria (in which case the examination of contents shall terminate with the conclusion that the object does satisfy the protection criteria).

28. Notice of results of examination of contents:

28.1 The National Office of Industrial Property must notify an Applicant of the results of the said examination, specifying which object satisfies the protection criteria and which object fails to satisfy the protection criteria.

28.2 If an object stated in the Application is inconsistent with the request for the issuance of a Patent for an industrial design, or if the object is consistent but fails to satisfy the protection criteria, the notice of results of the examination of contents shall specify an intention to refuse issuance of a Patent and the reasons for refusal, and shall also fix a time-limit of 2 months from the date of the notice for the Applicant to provide its opinion. If the scope (quantity) of protection is too wide, the notice must also specify the reasons therefor and indicate an intention to narrow the scope (quantity) of protection.

28.3 If an object satisfies the protection criteria but the Application contains deficiencies then the notice of results of the examination of contents shall specify such deficiencies, fix a time-limit of 2 months from the date of the notice for the Applicant to provide its opinion or to rectify the deficiencies, and indicate that issuance of a Patent will be refused if the applicant fails to rectify the deficiencies to the extent required or fails to provide a legitimate reason opposing [refusal].

28.4 If an object satisfies the protection criteria, or if in the cases stipulated in clauses 28.2 and 28.3 above the Applicant has narrowed the scope (quantity) of protection so that the object now satisfies the protection criteria, or if the Applicant has rectified deficiencies and/or provided a legitimate reason opposing [refusal to issue], then the notice of results of the examination of contents shall fix a time-limit within which the Applicant should pay the fee for announcement of a Patent, the registration fee and the fee for maintaining the validity of the Certificate for the first year. The above time-limit shall be one month from the date the Applicant receives the notice or two months from the date of issuance of the notice, whichever is the earlier.

28.5 If within the fixed time-limit the Applicant fails to rectify deficiencies as requested and/or fails to provide an opinion opposing [refusal to issue] then the National Office of Industrial Property shall refuse to issue a Patent.

Where the notice of results of the examination of contents fixes a time-limit for payment of fees as prescribed in clause 28.4 above but the Applicant fails to pay within time the fee for announcement, the registration fee and the fee for issuance of a Patent, then the National Office of Industrial Property shall refuse to issue a Patent.

28.6 If an Application contains a number of objects only one of which falls within the category in clause 28.5 above, then the refusal to issue a Patent shall only apply to that one object (and a Patent shall be issued for the remaining objects).

29. Time-limits for examination of contents:

29.1 The time-limit for examination of contents of an Application shall be six (6) months from the date of announcement of the Application.

29.2 If during the process of conducting the examination of contents of an Application the Applicant on its own initiative or at the request of the National Office of Industrial Property amends or supplements documents, the time-limit for examination of contents of an Application shall be extended by one month. If an application is amended or supplemented at the request of the National Office of Industrial Property, the period which was reserved for the Applicant to amend or supplement documents shall not be included in the time-limit for examination of contents.

29.3 Prior to the last day of the time-limit for examination of contents, the National Office of Industrial Property shall send notice of the results of the examination of contents to the Applicant in accordance with clause 28 of this Circular.

## **Section 6**

### **Amendment of Applications**

30. Amendment, addition, division and assignment of Applications:

30.1 Prior to the National Office of Industrial Property providing notice of refusal to approve an Application or notice of refusal to issue a Patent or prior to the National Office of Industrial Property issuing a decision to issue a Patent, an Applicant may amend or add to the Application documents either on its own initiative or at the request of the National Office of Industrial Property, including dividing the Application (by separating one or more of the industrial designs in an Application for an industrial design).

The applicant shall file a set of documents as amended together with an explanation of the amendments compared to the original version, and shall also pay a fee in accordance with the regulations.

30.2 Any amendment or addition to the Application may not extend the scope (quantity) of protection beyond the contents disclosed in the Descriptive section and may not change the nature of the object stated in the Application. If amendments or additions extend the scope (quantity) of protection or change the nature of the object, then the Applicant must file a new Application and all procedures must be re-conducted from the beginning.

30.3 Divided Applications shall retain the original date of filing the Application and the original priority date/s. With respect to each divided Application, the Applicant shall pay an application filing fee and all other fees for procedures which are carried out independently of the original Application, but need not pay an additional fee for requesting entitlement to priority right. Divided Applications shall be examined for form and shall continue to be dealt with in accordance with procedures not yet completed on the initial Application. The date of filing a request to divide an Application shall be deemed to be the date of amendment and addition to the initial Application for the purpose of calculating the time-limit for examination of contents. The initial Application (after it has been divided) shall continue to be dealt with in accordance with the usual procedures and the applicant must pay a fee for amendment and addition to an application.

30.4 An Applicant may request recognition of a change of the Applicant's name and address and a change of Applicant (assignment of Application or transfer of rights to the Application as a result of inheritance, merger or demerger of a legal entity, or pursuant to a court verdict and so forth). Any request for recognition of a change shall be made in writing and the Applicant must pay a fee in accordance with the regulations. One letter may request recognition of one item of change of the same contents appearing in a number of Applications, on condition that the Applicant must pay a fee for each of the Applications.

## **CHAPTER III**

### **Assessment of Objects in accordance with Protection Standards**

31. Assessment of whether objects stated in Applications are consistent with the request for the issuance of a Certificate of exclusive right to the industrial design:

31.1 The external appearance of a product - the object to be protected with the title of an industrial design - means the essential and complete collection of aesthetic special characteristics of the external components being cubic, linear and colour components of the relevant product.

31.2 An object stated in an Application shall not be deemed to be the external appearance of a product if such object is an internal appearance (the part which is invisible during use) of a product and in this case it shall be deemed inconsistent with the request for the issuance of a Patent for an industrial design.

32. Assessment of ability to use an industrial design as a model for manufacturing products:

32.1 Pursuant to article 5.2 of the Decree, an industrial design shall be deemed capable of being used as a model for manufacturing industrial products or handicrafts if products with the external appearance of such industrial design may be put into mass production.

32.2 In the following cases, an object stated in an Application shall be deemed incapable of being used as a model for manufacturing products with the same external appearance as that object:

- (a) If the object stated in the Application has the appearance of a product in an unstable state (the object has an unstable appearance);
- (b) If a product with the appearance of the object stated in the Application can only be created with special techniques or the creation of products with the same appearance as that stated in the Application does not occur repeatedly;
- (c) If [products] have different appearance for discernable reasons.

33. Assessment of the novelty of industrial designs:

33.1 An industrial design stated in an Application shall be deemed to be new if it satisfies the conditions set out in article 5.1 of the Decree.

33.2 Minimum mandatory information sources:

- (a) In order to assess the novelty of an industrial design stated in an Application, reference must be made to at least the information in the following mandatory sources:
  - All industrial designs announced by the National Office of Industrial Property with a priority date earlier than the priority date stated in the Application;
  - All industrial designs and Certificates of protection of industrial property rights with respect to industrial designs which other organizations and countries announced within twenty five (25) years before the priority date stated in the Application and archived in the industrial designs database at the National Office of Industrial Property;
  - Other information concerning industrial designs collected and retained by the National Office of Industrial Property.
- (b) In necessary and possible cases, reference shall be extended beyond the minimum mandatory information sources.

33.3 Basic special shaping features of an industrial design:

- (a) Basic special shaping features of an industrial design means specified elements of its cubic, linear and colour features and of the correlation of positions or correlation of measurements together with other elements which create the necessary and complete collection which determines the nature of that industrial design;
- (b) The following elements shall be deemed not to be basic special shaping features of an industrial design:
  - The cubic and linear features which are decided by the technical function or use function of the product, for example the flat shape or plane surface of a

disk containing data which is decided by the relative movement between the disk and its fixed structure and so forth;

- Elements whose existence in the collection of signs are insufficient to cause any aesthetic effect (the appearance of the product remains unchanged whether or not those elements are present), for example there is a change in a familiar cubic or linear feature but such change is insufficient to be perceptible so that the changed cubic or linear feature is still perceived as the old cubic or linear feature;

- Words or images which are attached to the product only to exercise a function of the goods trademark or to provide information or guidelines on origin, special features, composition, utility or method of use and so forth of such product, for example words printed on the trademark.

#### 33.4 Reference to confronting information and industrial designs and Report on references:

(a) The objective of referring to information shall be in order to find overlapping industrial designs or the closest similar industrial design to the industrial design stated in the Application, in which:

- Two industrial designs shall be deemed to overlap if they have an identical collection of basic special shaping features;

- Two industrial designs shall be deemed to be similar if the majority of the basic special shaping features in each of the two collections are the same.

(b) Confronting industrial design:

The confronting industrial design means the nearest overlapping or similar industrial design (the one with the most overlapping basic special shaping features in a fixed collection) to the industrial design stated in the Application.

(c) Result of references:

The result of references shall be expressed in a Reference Report specifying the field in which reference was made, the scope of reference and the results found within that scope (statistics on the industrial designs found, details on sources of announcements and information, dates of announcements or disclosures), and the Report shall bear the full name of the person preparing it (the person who conducted the references).

#### 33.5 Conclusion on the novelty of an industrial design:

(a) In order to have grounds for concluding whether or not the industrial design stated in the Application is new, it shall be necessary to conduct a comparison of the collection of basic special shaping features of the industrial design with the collection of basic special shaping features of the confronting industrial design.

(b) The industrial design stated in the Application shall be deemed to be new if:

- A confronting industrial design is not found in the minimum information sources; or

- A confronting industrial design is found in the minimum information sources but the industrial design stated in the Application has at least one basic special shaping feature which is not in the collection of basic special shaping features of the confronting industrial design, and

- The industrial design is not the external appearance of a product which is widely known (it is not a positional change or an assembly or association of special characteristics of an already well known industrial design; or it does not bear the natural appearance of flora and fauna and so forth, or the appearance of well known geometrical shapes (such as circular, elliptical, triangular, square, rectangular or polygonal shapes, or prismatic forms of the above shapes which appear in profile and so forth); it is not the appearance of famous products or buildings in Vietnam or overseas (such as the Tortoise Tower on the Lake of the Returned Sword [symbol of Hanoi]; the statue of the god of Happiness, Wealth and Longevity; the Eiffel Tower and so forth); or it is not an industrial design which only has aesthetic value such as products being sculptures, all types of paintings and statues and so forth).

34. Conclusion on whether industrial designs are capable of being protected; determination of scope (quantity) of protection:

34.1 If there is no reason for confirming that the industrial design stated in an Application fails to satisfy at least one of the protection standards, the National Office of Industrial Property shall conclude that such industrial design satisfies all the protection standards (satisfies all the standards for issuance of a Patent for the industrial design). In the opposite case, the National Office of Industrial Property shall conclude that the industrial design fails to satisfy the protection standards and shall refuse to issue a Patent for the industrial design.

34.2 Where the industrial design satisfies all the protection standards, the object or scope (quantity) of protection shall be fixed in accordance with the Request for protection and shall include a presentation of the different shaping features of the industrial design in the form of drawings and/or photos.

## **CHAPTER IV**

### **Issuance, Registration, Suspension, Rescission of Effectiveness of Certificates of Protection, and Complaints about Certificates of Protection**

#### **Section 1**

#### **Issuance and Re-issuance of Certificates of Protection and of Copies of Certificates of Protection**

35. Issuance of Certificates of protection:

35.1 Within a time-limit of ten (10) days from the date an Applicant pays all the fees stipulated in clause 28.4 on time, the National Office of Industrial Property shall conduct procedures for issuance of a Certificate of protection pursuant to articles 23 and 26 of the Decree.

If after being issued with a Certificate of protection the owner considers the Certificate contains an error, the owner shall have the right to request the National Office of Industrial Property to amend the Certificate. If the error was the fault of the owner, the owner shall pay a fee for amendment. If the error was the fault of the National Office of Industrial Property, the owner need not pay any fee. The above-mentioned amendment shall not change the nature, object or scope (quantity) of protection.

35.2 As from the date the National Office of Industrial Property issues a decision to issue a Certificate of protection, the applicant shall not be permitted to assign the Application to another person. If a contract of assignment of the Application has been signed between the applicant and another person but procedures have not yet been conducted at the National Office of Industrial Property, such contract must be converted to a contract of transfer of ownership of an industrial design pursuant to a new Certificate of protection which is recognized.

36. Right to request issuance and re-issuance of copies of Certificates of protection and right to request re-issuance of Certificates of protection:

36.1 If industrial property ownership is general ownership and the National Office of Industrial Property is unable to hand over Certificate/s of protection to the owners in common pursuant to article 26.3 of the Decree, the owners may file an application with the National Office of Industrial Property for issuance of a Copy certificate of protection on condition that they pay a fee for same.

36.2 In the following circumstances an industrial property owner who has been issued with a Certificate of protection (including a Copy certificate of protection) may file an application with the National Office of Industrial Property for re-issuance of a Certificate of protection or Copy certificate of protection on condition that the owner pays a fee for same:

(a) Where a Certificate of protection or Copy certificate of protection has been lost, on condition that a legitimate reason is provided;

(b) Where a Certificate of protection or Copy certificate of protection has been damaged (torn, smeared or faded to the extent it is no longer useable) on condition that the damaged certificate is handed in.

37. Application files requesting issuance or re-issuance of copies of Certificates of protection and requesting re-issuance of Certificates of protection:

An application file requesting issuance or re-issuance of a copy Certificate of protection or requesting re-issuance of a Certificate of protection shall comprise:

(a) Declaration requesting issuance or re-issuance of a copy Certificate of protection or requesting re-issuance of a Certificate of protection (prepared in accordance with the sample form in the appendix to this Circular);

(b) Written explanation of the reason why the Certificate or copy Certificate was lost or destroyed (in the case of a request for re-issuance of a Certificate or copy Certificate);

(c) Power of attorney (if the application is filed by a representative);

(d) Voucher proving payment of fee for issuance of a Certificate or copy Certificate.

38. Processing application files requesting issuance or re-issuance of copies of Certificates of protection and requesting re-issuance of Certificates of protection:

38.1 The National Office of Industrial Property shall consider application files requesting issuance or re-issuance of copies of Certificates of protection and requesting re-issuance of Certificates of protection within one month from the date of their receipt. Where a file satisfies the above-mentioned requirements, the National Office of Industrial Property shall issue a decision to issue or re-issue a copy Certificate of protection or a decision to re-issue a Certificate of protection and record it in the relevant chapter on registration of the particular Certificate of protection in the National Register.

38.2 The contents of a copy Certificate of protection shall fully record all information from the corresponding Certificate of protection. The contents of a re-issued Certificate of protection or copy Certificate of protection shall fully record all information from the initially issued certificate and shall be marked "Copy document" or "Re-issued document".

38.3 If an application file fails to satisfy the requirements set out in clause 37 of this Circular, the National Office of Industrial Property shall issue a notice of refusal to issue a copy Certificate of protection or a notice of refusal to re-issue a Certificate of protection, specifying the reasons therefor.

## **Section 2**

### **National Register, Announcement of Decisions to Issue Certificates of Protection**

39. National register of industrial designs:

39.1 The national register (Register) of industrial designs shall be the official and publicly available database which records complete information on the legal status of industrial property rights applicable to industrial designs which have been certified by the State.

39.2 The Register of industrial designs shall include items relating to each Certificate of protection, each item to include information on the Certificate of protection (number, date of issuance, name of object protected, scope (quantity) of protection, duration of effectiveness, name and address of the owner of the Certificate and full name of the author); information on the Application requesting issuance of the Certificate of protection (number of Application, date of filing, priority date, and name of any industrial property representative service organization); information about amendments to the Certificate of protection, the status of its effectiveness (maintained effectiveness, suspended effectiveness and rescinded effectiveness); transfer of ownership of or of use right to the industrial design; date of issuance or re-issuance of copy Certificate of protection or date of re-issuance of Certificate of protection and name of person issuing same.

40. Announcement of decisions to issue Certificates of protection:

Every Certificate of protection which is issued by the National Office of Industrial Property shall be announced in the Official Industrial Property Gazette within 2 months of the date of the Decision [on issuance]. The Applicant must pay a fee for the announcement.

The information to be announced shall be all the information in the relevant Decision, and one or a number of photos or drawings of the industrial design.

### **Section 3**

#### **Complaints about Procedures for Issuance of Certificates of Protection**

41. Who has the right to complain, the object of a complaint and the limitation period for lodging complaints:

41.1 The persons with the right to complain as prescribed in article 27.1 of the Decree within the limitation period prescribed in article 27.3 of the Decree shall have the right to conduct compliant procedures in respect of Notices of official refusal and Decisions by the National Office of Industrial Property concerning registration of industrial designs.

41.2 The limitation period for lodging first complaints as prescribed in article 27.3 of the Decree shall be applied consistently with article 31 of the Law on Complaints and Denunciations namely ninety (90) days calculated from the date on which the person entitled to lodge a complaint receives or is aware of a Notice or Decision by the National Office of Industrial Property refusing to approve an Application or on issuance or refusal to issue a Certificates of Protection.

42. Complaint files:

42.1 General requirements:

Complaint files must satisfy the formal requirements stipulated in clauses 5.1(a) to 5.1(e) inclusive of this Circular, and each complaint shall mention only the one Notice or Decision which is complained of. Each complaint file may mention a number of Notices or Decisions if all the latter have the same contents and provide the same reason for the complaint, on condition that the complainant must pay a fee in accordance with the regulations for each Decision or Notice which is complained of.

42.2 Complaint files must include the following documents:

- (a) Declaration of complaint, prepared in accordance with the sample form in the appendix to this Circular;
- (b) Copy of the Decision or Notice which is complained of;
- (c) Copy of the Decision resolving the first complaint (in the case of a second complaint);
- (d) Evidence proving the reason for the complaint (if necessary);
- (e) Power of attorney (if the application is filed by a representative);
- (f) Voucher proving payment of complaint fee.

42.3 Evidence means documents (evidence in writing) or objects (evidence in the form of objects) used to prove or clarify the reasons for the complaint.

Evidence must satisfy the following requirements:

(a) Evidence in writing may be documents in a foreign language on condition that a Vietnamese translation is provided if the person authorized to resolve the complaint so requests;

(b) Where evidence in writing is a document provided by an individual or organization without a seal or by a foreign individual or organization in the name of the underwriter who has given his name to the document, then the signature must be certified by the public notary or a competent authority;

(c) Where evidence is in the form of an object (a publication, a video and so forth) then depending on each specific case the country of origin of the object or of the information contained in the object must be specified, and the date when the object or information contained in the object was published or announced must also be clarified;

(d) In the case of evidence in the form of objects, there must also be a document describing special points directly related to the contents of the complaint.

#### 43. Responsibilities of complainants:

Complainants must be honest when they provide evidence and they shall be responsible for the consequences of providing false evidence.

#### 44. Withdrawal of complaints:

44.1 A complainant may provide notice of withdrawal of a complaint at any time at all. If notice of withdrawal of a complaint is provided by an industrial property representative service organization, the complainant must clearly specify such right to withdraw in a power of attorney.

44.2 A withdrawn complaint shall be deemed not to have been lodged. The complainant shall not be entitled to return of the complaint file nor to a refund of any fee paid.

#### 45. Accepting jurisdiction over complaint files:

45.1 Within a time-limit of 10 days from the date of receipt of a complaint file, the person authorized to resolve the complaint shall check the file to ensure it complies with the formal requirements and then issue a notice to the complainant advising that jurisdiction has been accepted and the date of same, or advising that jurisdiction has not been accepted and the reasons therefor.

#### 45.2 Jurisdiction shall not be accepted over complaint files in the following circumstances:

(a) The complainant does not have the right to lodge a complaint;

(b) The complaint was lodged outside the limitation period for lodging complaints;

(c) The complaint file fails to satisfy the requirements stipulated in the clauses above.

#### 46. Related parties:

46.1 Where jurisdiction is accepted, the person authorized to resolve the complaint shall issue a notice on the contents of the complaint to persons with rights and interests which are directly effected ("related parties"), fixing a time-limit of 2 months from the date of the notice for such parties to provide their opinions.

46.2 Related parties shall have the right to provide information and evidence proving their arguments.

46.3 If a related party/ies has not provided an opinion at the expiry of the above-mentioned time-limit, the complaint shall be resolved on the basis of the complainant's opinion.

#### 47. Decision on resolution of a complaint:

The person authorized to resolve the complaint shall rely on the arguments and evidence of the complainant and of related parties in order to issue a decision on resolution of the complaint within the time-limit stipulated in article 27.4 of the Decree.

Prior to issuing a decision on resolution of the complaint, the person authorized to resolve the complaint shall issue a notice to the complainant and related parties about the arguments and evidence of the complainant and of related parties which have been used to resolve the complaint and stating the decision it is proposed to issue, and fixing a time-limit of 2 months from the date of the notice for the said parties to provide their opinions.

The period reserved for the complainant and related parties to provide arguments and evidence at the request of the person authorized to resolve the complaint shall not be included in the time-limit for resolution of the complaint.

#### 48. Effectiveness of decisions resolving complaints:

Any procedures concerning industrial property which depend on the result of resolution of a complaint shall only be conducted on the basis of:

A decision resolving a first complaint if the complainant does not lodge a second complaint or institute administrative procedures; or a decision resolving a second complaint or a court decision if the complainant lodges a second complaint or institutes administrative procedures.

## **Section 4**

### **Suspension and Rescission of Effectiveness of Certificates of Protection**

#### 49. Right to request suspension or rescission of effectiveness of Certificates of Protection:

At any time during the validity of a Certificate of protection, any person shall have the right to apply for suspension or rescission of validity of such Certificate pursuant to articles 28 and 29 of the Decree and in accordance with the order and procedures set out in this Section.

50. Application files for suspension or rescission of validity of Certificates of Protection:

50.1 Application files for suspension or rescission of validity of Certificates of Protection must satisfy the formal requirements stipulated in clauses 5.1(a) to 5.1(e) inclusive of this Circular.

50.2 Any one application file may request suspension or rescission of validity of a number of Certificates of Protection when the same reason applies to each, on condition that the applicant must pay a fee for each Certificate of Protection referred to.

50.3. Application files for suspension or rescission of validity of Certificates of Protection shall include the following documents:

- (a) Declaration requesting suspension or rescission of validity of a Certificate of Protection, prepared in accordance with the sample form in the appendix to this Circular;
- (b) Evidence (if any);
- (c) Power of attorney (if the Application is filed by a representative);
- (d) Voucher proving payment of fee.

51. Dealing with application files for suspension or rescission of validity of Certificates of Protection:

51.1 Application files for suspension or rescission of validity of Certificates of Protection shall be dealt with in the same order as for resolution of complaints set out in clauses 45 to 48 inclusive of this Circular.

51.2 If an applicant or a related party disagrees with the conclusion of the National Office of Industrial Property on the request for suspension or rescission of validity of a Certificate of Protection, such applicant or related party shall have the right to make a complaint about the Decision or Notice in accordance with the procedures set out in clauses 45 to 48 inclusive of this Circular.

51.3 The contents of any suspension or rescission of validity of a Certificate of Protection shall be announced in the Official Industrial Property Gazette and shall be recorded in the national register of industrial designs.

51.4 If the applicant who requests suspension or rescission of validity of a Certificate of Protection is the owner of the Certificate, the National Office of Industrial Property shall consider whether or not the application affects the rights of third parties (whether or not there is a currently an effective licence contract in respect of the relevant object) and if so then the National Office of Industrial Property shall not deal with the request pursuant to the procedures set out in clauses 51.1 and 51.2 of this Circular.

## **CHAPTER V**

### **Amendment of Certificates of Protection, Extension of Validity of Certificates of Protection**

#### **Section 1**

##### **Amendment of Certificates of Protection**

###### 52. Right to request amendment of Certificates of protection:

An owner of a Certificate of protection shall have the right to request the National Office of Industrial Property to record each change of the owner's name and address and any change in the owner of a Certificate of Protection (assignment of ownership as a result of inheritance, merger, division or conversion of legal form of a business establishment pursuant to a court verdict and so forth). Any beneficiary of the owner's rights shall also have the right to request that changes concerning the owner of a Certificate of Protection be recorded.

The applicant for recording a change of the owner's name and address and any change in the owner of a Certificate of protection must pay a fee for amendment to the Certificate of protection.

###### 53. Applications for amendment of Certificates of protection:

In order to amend the above-mentioned items, the owner of a Certificate of protection must file an application with the National Office of Industrial Property, the file to comprise:

- (a) Declaration requesting amendment to the Certificate of protection (prepared in accordance with the sample form in the appendix to this Circular);
- (b) Original Certificate of protection;
- (c) Documents verifying the change in ownership where the request is to record same (certificate of inheritance, certificate of merger, separation or conversion of legal entity, court decision and so forth);
- (d) Voucher proving payment of fee for amendment of Certificate of protection;
- (e) Power of attorney (if the application is filed by a representative).

###### 54. One application for amendment of a number of Certificates of protection:

One application may be made for amendment of a number of Certificates of protection and may be consolidated with the applications prescribed in clauses 30.1, 30.2 and 30.4 of this Circular if it concerns the same changes or amendments, on condition that the Applicant must pay a fee for each Certificate of protection or Application.

55. Dealing with applications for amendment of Certificates of protection:

The National Office of Industrial Property shall consider an application file requesting amendment of a Certificate of protection within one month from the date of its receipt. Where a file is considered proper, the National Office of Industrial Property shall make the change to the Certificate of protection and the register, and shall announce it in the Official Industrial Property Gazette. In the opposite case, the National Office of Industrial Property shall send the applicant a notice of intention to refuse the change with reasons therefor, and shall fix a time-limit of 2 months from the date of the notice for the Applicant to rectify deficiencies or provide its opinion opposing such intention. If within such time-limit the applicant fails to rectify deficiencies or fails to rectify the deficiencies to the extent required and/or fails to provide an opinion opposing [the intention] or fails to provide a legitimate reason opposing [the intention], then the National Office of Industrial Property shall issue an official notice refusing the application.

## Section 2

### Extension of Validity of Certificates of Protection

56. Conditions for extension:

In order to extend the validity of a Certificate of protection for an industrial design, the owner of the Certificate must file an application for extension with the National Office of Industrial Property within six (6) months prior to the date of termination of validity of the certificate.

The application for extension may be filed later than the time period stipulated above but not more than six months after expiry of the previous period of validity and the Applicant must pay an additional ten (10) per cent of the extension fee for each month of delay in filing.

57. Application file for extension:

An Application file for extension of validity of a Certificate of protection shall comprise:

- (a) Declaration requesting extension of validity of a Certificate of protection prepared in accordance with the sample form in the appendix to this Circular;
- (b) Original Certificate of protection (in the case of an application for recording extension onto the Certificate);
- (c) Voucher proving payment of extension fee;
- (d) Power of attorney (if the application is filed by a representative).

58. Dealing with applications for extension:

The National Office of Industrial Property shall consider an application file requesting extension within one month from the date of its receipt, and shall issue an extension Decision and record it on the Certificate of protection where

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the owner so requests, register the extension and publish it in the Official Industrial Property Gazette where the application is outside the following cases:

- (a) The application file is improper or the stipulated fees are not paid;
- (b) The applicant for extension is not the owner of the relevant Certificate of protection.

If the application falls into one of the above cases, the National Office of Industrial Property shall send the applicant a notice of intention to refuse the application for extension stating the reasons therefor and fixing a time-limit of 2 months for the Applicant to rectify deficiencies or provide its opinion opposing such intention. If within such time-limit the applicant fails to rectify deficiencies or fails to provide a legitimate reason opposing [the intention], then the National Office of Industrial Property shall issue an official notice refusing the application.

## **CHAPTER VII**

### **Collection and Refund of Fees; Extending and Shortening time-limits**

#### 59. Collection of fees:

When the National Office of Industrial Property receives a file or Application or a request to conduct any other procedure, it must check the voucher proving payment of the fee.

If the Applicant has failed to pay the stipulated fee in full, the National Office of Industrial Property shall prepare a fee notification slip recording the rate and amount payable and send it to the Applicant. A fee payer shall be issued with two counterfoil receipts for any fee paid, the receipts shall record the rate and amount paid, and when an Applicant submits a file or Application then the Applicant shall submit one counterfoil receipt as the voucher proving payment of the fee.

#### 60. Refund of fees:

All fees paid shall be repaid in full or in part on the request of the payer in the following circumstances:

- (a) When the fee paid exceeded the stipulated amount;
- (b) In the circumstances stipulated in the second paragraph of article 32.2 of the Decree.

#### 61. Form of refund of fees:

An Applicant for a refund of fees may choose one of two methods of refund: Direct refund at the National Office of Industrial Property or via an agent for collection and distribution (post office, bank and so forth). If a fee is refunded via an agent for collection and distribution, the Applicant shall be liable for

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transmission costs. An Applicant for a refund of fees shall submit a Declaration requesting a refund of fees prepared in accordance with the sample form in the appendix to this Circular, and specifying which of the two methods of refund the Applicant chooses.

Where the National Office of Industrial Property approves a request for refund of fees, it shall send the Applicant a notice specifying the amount of the refund and the method of refund, which notice shall be signed by the Applicant on receipt of the refund.

In the case where a request for refund of fees is not approved, the National Office of Industrial Property shall send the Applicant a notice specifying the reason therefore.

#### 62. Extending time-limits:

The time periods reserved for amending or supplementing documents as requested by the National Office of Industrial Property, for refutation of opinions and for opposing an intention expressed by the National Office of Industrial Property may be extended once for the same period as the original time-limit at the request of the person conducting the relevant procedure, on condition that such person must pay a fee for the extension (a fee for consideration of a file out of time).

#### 63. Shortening time-limits:

Any person conducting procedures at the National Office of Industrial Property or at any other authorized body may make a request that such Office or body complete the procedures earlier than the stipulated time-limit, on condition that such person must pay a fee for consideration of a file earlier than the stipulated time-limit.

The National Office of Industrial Property or any other authorized body may agree or not agree to a request that such Office or body complete procedures earlier than a stipulated time-limit, depending on the capability of and conditions at such Office or body.

## **CHAPTER VII**

### **Final Provisions**

#### 64. Responsibilities of people carrying out civil service duties regarding industrial property:

64.1 Staff of the National Office of Industrial Property or any other authorized body including people working for the said Office or body pursuant to contract to whom jobs are assigned and who carry out the procedures set out in this Circular (hereinafter referred to as people carrying out civil service duties regarding industrial property) shall be obliged to comply with the laws relevant to the work they do.

64.2 People carrying out civil service duties regarding industrial property rights who breach the law shall be disciplined pursuant to Decree No. 97-1998-ND-CP of the Government dated

17 November 1998 on disciplinary penalties applicable to civil servants and the liability of civil servants for material damage.

64.3 People carrying out civil service duties regarding industrial property rights who breach the law and cause loss and damage to others shall pay compensation pursuant to Decree No. 47-CP of the Government dated 3 May 1997 on resolution of compensation for loss caused by civil servants and officers of legal bodies.

65. Complaints:

In addition to the right to complain about Decisions and Notices relevant to procedures for determination of rights, people carrying out civil service duties regarding industrial property rights as prescribed in this Circular shall also have the right to complain or institute proceedings about other Decisions and Notices made by the National Office of Industrial Property or other authorized bodies in accordance with the laws on complaints, denunciations and administrative proceedings.

The order and procedures for complaints and for resolution of complaints as stipulated in article 27 of the Decree and in clauses 45 to 48 inclusive of this Circular shall, with appropriate changes, apply to complaints about the above-mentioned Decisions and Notices.

66. Regulations on Applications and on order for conducting procedures for registration of industrial designs:

The Ministry of Science & Technology shall, in a separate document, issue Regulations on Applications and on order for conducting procedures for registration of industrial designs which are consistent with the provisions in the Decree and in this Circular.

67. Effectiveness:

This Circular shall replace the provisions on procedures relating to establishment of industrial property rights with respect to industrial designs in Circular No. 3055-TT-SHCN of the Ministry of Science, Technology & Environment dated 31 December 1996.

This Circular shall be of full force and effect fifteen (15) days after the date of its proclamation in the Official Gazette.

**For the Minister  
Ministry of Science &  
Technology  
Deputy Minister  
BUI MANH HAI**