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New circulations on Patent & Design in Vietnam

- Pursuant to the Decree No. 54/2003/ND-CP issued on 14 May 2003 by the Government of Vietnam, stipulating the functions, obligations, authority and structure of Ministry of Science and Technology;
- Pursuant to the Decree No. 63/CP dated 24 October 1996 by the Government of Vietnam, stipulating detailed regulations on Industrial Property, amended by the Decree No. 06/2001/ND-CP issued on 01 February 2002;

The Ministry of Science & Technology of Vietnam issued the Circulation No. 29/2003/TT-BKHCN & No. 30/2003/TT-BKHCN on 5 November 2003, guiding on the procedure of establishing the industrial property right over Industrial Design and Patent respectively. These Circulations replace the Circulation no. 3055/TT-SHCN regulating on establishment of IP rights issued on 31 December 1996 by the Ministry of Science & Technology, and they are effective from the date of publication in the Vietnam Industrial Property Gazette

In general, these new Circulations have been issued substantially based on the said Circulation No. 3055/TT-SHCN, however they give the guidance on the procedure of establishment and protection for ID & Patent more specifically, more clearly and more fully, in the order of the following issues:

1. Common regulations on: certification of documents; applicants; power of attorney, etc.
2. Requirements of application in respect of: the formality, the content, the filing and the receipt; the process of preliminary examination, substantive examination; the publication; the amendment of application.
3. **Evaluation of objects according to criteria of protection: the suitability, the applicability and the novelty.**
4. Issuance, registration, appeal and request for cancellation of validity of patents/certificates.
5. Regulations on international Applications (for Invention, Utility Solution)
6. Amendment, maintenance of patent/certificates.
7. **Collection and refundment of the fees; time extension and time reduction.**

Regarding the time limit of examination of application: the time frame of each stage of examination process are reduced: one (01) month for preliminary examination, in case of having any amendments this time limit will be lasted for 15 days; six months (06) for substantive examination for Industrial Design and 12 months for patent, in case of having any amendments, this time limit will be lasted for 01 month; one (01) month for recordal of change of applicants/proprietors, renewal of patents/certificates.

Regarding substantive examination, the new Circulation guides in detail on using of search result in process of examination, on considering the opinion of the third party, on amending of application in respect of the formality and the explanation of application's content, on canceling and restoring the substantive examination, on the process of examining the objects according to the criteria of protection.

Specially, the Circulation provides officially and clearly the regulations on the formality of refunding of the payment; on time extension of amending, supplementing or opposing the NOIP's opinion; and on the allowance of filing request for examination of application within shorter time-limit.

As for Invention, Utility Solution

Regarding the formality, which is regulated more specifically on the number of words per page of description, maximum is 450 words/page; the abstract of patent description consists of less than 150 words. The application may be accompanied with supplement documents that are electronic data of a part or the entire of content thereof.

Regarding the content of application, there are regulations more detail on the homogeneity of the application in accordance with the provision 2, the Article 11 of the Decree. The Claim should be illustrated by neither the reference to the description nor the drawings and structured with one sentence. The Claim should be formed by two parts: the “*limitation*” and the “*distinctiveness*”. The Description have to include the content of “*detailed description of the method of implementation of patent*”. Besides, the new Circulation also stipulates in detail on the requirement of application in respect of **biology science** (included in the entire Item 6.10 & 6.11).

Regarding the formality examination of application, there are regulations more specifically on multi-object application: if the shortcoming relates only some of objects included in the application, the application shall be not accepted therefor and still accepted for remain ones.

Regarding substantive examination, as for the multi-object application, if there are some objects that are not amended or amended incorrectly, the refusal of granting the patent shall concern those objects only. The patent shall be granted for the remain objects meeting the criteria of protection, provided that the applicant must amended the description thereof.

Regarding the evaluation of objects in accordance with the criteria of protection, this part includes detailed regulations on the applications not to meet the requirement of granting patent; the definition of technical solution and of the acceptable/unacceptable one. Clearly, the new Circulation give the definition more specific in order to evaluate the applicability and the novelty, or the creation level of technical solution.

Regarding the maintenance of patents, according to the guide of this Circulation, the time of a valid patent is counted from the granting date of patent for the first validity year.

Regarding the PCT Application, both the application designating and the application selecting Vietnam should be applied for entering the national phase within 31 months counting from the priority date. *International Search Office and Preliminary Examination Office* include the Intellectual Property of Korea.

As for Industrial Design:

Regarding the formality of the application, the application may be accompanied with the supplement documents which are electronic date of a part or the entire of the content thereof.

Regarding the content of the application, the requirement is more clear on the homogeneity of the application in accordance with the provision 2, the Article 11 of the Decree. The different models of an ID may be requested for protection in separated applications provided that the applicant must indicate clearly the filing date and filing receipt of the first applications in the following ones. However, the applicant shall be granted only one patent for all those models of the ID. Five (05) in stead of six (06) drawings/photos of the ID are required for filing. In accordance with the new Circulation, the Claim must include features of industrial design that are claimed for protection, i.e. the new features are different substantially from those of the similar disclosed designs. Those features of ID must be described in the order of: feature of cubic and/or of lines; and/or the interrelation of those features; and/or the color (if any).

Regarding the substantive examination of the Application, the time frame for substantive examination is 6 months counting from the date of publication (the ID application is published in the second month as of the date of acceptance of application).

Regarding the section of evaluating objects in accordance with the criteria of protection, the new Circulation stipulates more clearly the base of evaluating the ID's capability of serve as a model; the base of evaluating the ID's novelty, which include the basic feature of IDs.

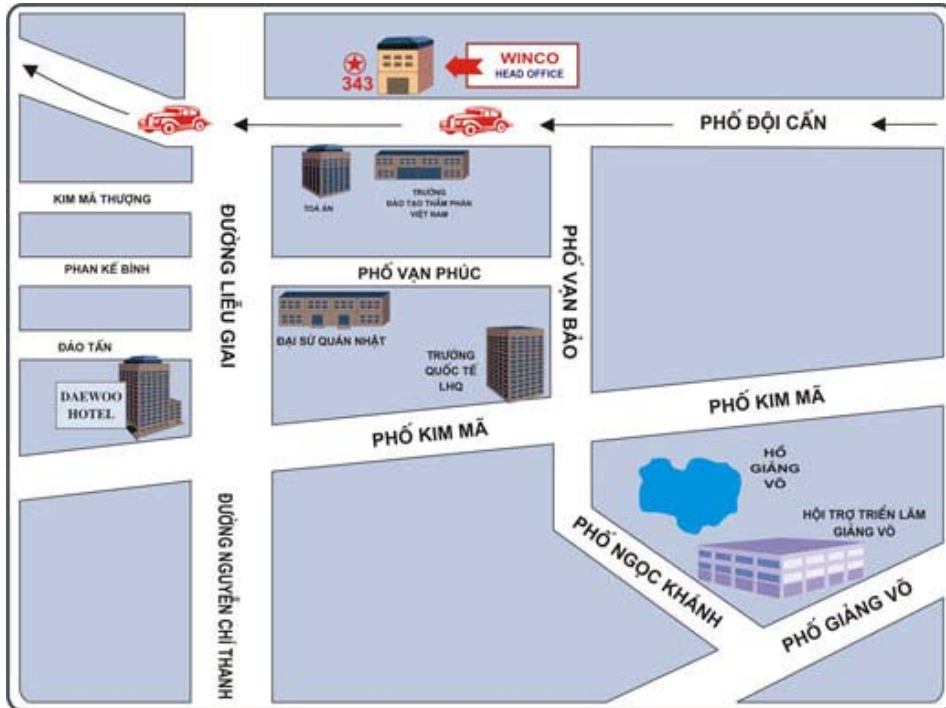
Note:

- *The Circulation No. 29/2003/TT-BKHCN over Industrial Design has been effective from the 26th November 2003.*
- *The Circulation No. 30/2003/TT-BKHCN over Patent has been effective form the 27th November 2003.*

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