

**CIRCULAR**

ON AMENDMENTS TO SOME ARTICLES OF THE CIRCULAR NO. 01/2007/TT-BKHHCN DATED FEBRUARY 14, 2007 PROVIDING GUIDELINES FOR THE GOVERNMENT'S DECREE NO. 103/2006/ND-CP DATED SEPTEMBER 22, 2006 ELABORATING AND PROVIDING GUIDELINES FOR SOME ARTICLES OF THE LAW ON INTELLECTUAL PROPERTY REGARDING INDUSTRIAL PROPERTY AMENDED IN THE CIRCULAR NO. 13/2010/TT-BKHHCN DATED JULY 30, 2010, CIRCULAR NO. 18/2011/TT-BKHHCN DATED JULY 22, 2011 AND CIRCULAR NO. 05/2013/TT-BKHHCN DATED FEBRUARY 20, 2013

*Pursuant to the Law on Intellectual Property dated November 29, 2005 and the Law on amendments to some articles of the Law on Intellectual Property dated June 19, 2009;*

*Pursuant to Law on complaint dated November 11, 2011;*

*Pursuant to the Government's Decree No. 103/2006/ND-CP dated September 22, 2006 elaborating and providing guidelines for some articles of the Law on Intellectual Property regarding industrial property and the Decree No. 122/2010/ND-CP dated December 31, 2010 on amendments to some articles of the Decree No. 103/2006/ND-CP;*

*Pursuant to the Government's Decree No.20/2013/ND-CP dated February 26, 2013 defining functions, tasks, rights and organizational structure of the Ministry of Science and Technology;*

*At the request of the Director General of the National Office of Intellectual Property (hereinafter referred to as "NOIP") and the Director General of the Department of Legal Affairs;*

*The Minister of Science and Technology hereby adopts a Circular on amendments to some articles of the Circular No. 01/2007/TT-BKHHCN dated February 14, 2007 providing guidelines for the Government's Decree no. 103/2006/ND-CP dated September 22, 2006 elaborating and providing guidelines for some articles of the Law on Intellectual Property regarding industrial property amended in the Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/TT-BKHHCN dated July 22, 2011 and Circular No. 05/2013/TT-BKHHCN dated February 20, 2013.*

**Article 1. Amendments to some articles of the Circular No. 01/2007/TT-BKHHCN dated February 14, 2007 providing guidelines for the Government's Decree no. 103/2006/ND-CP dated September 22, 2006 elaborating and providing guidelines for some articles of the Law on Intellectual Property regarding industrial property amended in the Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/TT-BKHHCN dated July 22, 2011 and Circular No. 05/2013/TT-BKHHCN dated February 20, 2013:**

**1. Point 1 is amended as follows:**

a) Point 1.1 is amended as follows:

"1.1. The industrial property rights arising or established on the bases prescribed in Clause 3, Article 6 of the Law on Intellectual Property, Clauses 1, 2, 3, and 4, Article 6 of the

Government's Decree No. 103/2006/ND-CP dated September 22, 2006 elaborating and providing guidelines for some articles of the Law on Intellectual Property regarding industrial property amended in the Decree No. 122/2010/ND-CP (hereinafter referred to as "Decree No. 103/2006/ND-CP") and specific regulations in this Point."

b) Point 1.4 is amended as follows:

"1.4 The industrial property rights to trademarks internationally registered under the Madrid Agreement and the Madrid Protocol (hereinafter referred to as "internationally registered trademark") shall be established according to the decision on acceptance of protection of the NOIP's internationally registered trademark and copy of the Gazette of International Trademarks of such internationally registered trademark issued by the International Bureau or the certificate of protection of internationally registered trademark in Vietnam issued by the NOIP at the request of the trademark proprietor. The abovementioned decision and certificate are as valid as protection certificates granted to the person registering a trademark in Vietnam.

**2. Point 2 is amended as follows:**

"2. Applicants for registration of industrial property

2.1. The applicant for registration of industrial property (hereinafter referred to as "applicant") is the organization or individual that files the application for registration of an invention, layout design, industrial design, trademark or geographical indication (GI). As soon as the protection certificate is granted to an invention/utility solution, layout design, industrial design or trademark, the applicant shall be recognized as the protection certificate holder. As soon as the GI protection certificate is granted, the applicant shall be recognized as the GI holder.

2.2. The applicant must satisfy the conditions for the right to register industrial property that are specified in Articles 86, 87 and 88 of the Law on Intellectual Property and Articles 7, 8 and 9 of the Decree No. 103/2006/ND-CP. In case of failure to satisfy such conditions, the industrial property registration shall be considered invalid."

**3. Point 3.4 is added as follows:**

"3.4 The authorization of an organization or individual that is not allowed to represent or authorization of multiple organizations or individuals of which is not allowed to represent shall be considered invalid."

**4. Point 4 is amended as follows:**

"4. Authorization of representatives to follow procedures for registering industrial property

4.1 The authorization and performance by authorized representative to follow procedures for registering industrial property (hereinafter referred to as "authorization") must be conformable to regulations of the law on authorization of the Civil Code and regulations of this Circular.

The applicant may replace the representative. The replacement of representative breaks off the authorization relation between the applicant and the authorized person must be made into a written document by the applicant.

The authorized person may reauthorize the third party with the written consent of the applicant. The relationship between the reauthorizing party and the re-authorized party is a secondary authorization that exists concurrently with the authorization relation between the applicant and the authorized party.

The reauthorization may be repeated if the authorized person and re-authorized person is the organization or individual that is allowed to represent.

4.2 The authorization must be made into a written document (power of attorney or authorization contract, collectively referred to as “power of attorney”). The power of attorney must contain at least:

- a) Names/Full names and full addresses of the authoring party and authorized party;
- b) Names/Full names and full addresses of the new representative or re-authorized party (if any);
- c) Scope of authorization, volume of authorized tasks;
- d) Authorization duration (a power of attorney of unspecified duration only ceases to be valid when the authorizing party declares the termination of the authorization);
- dd) Date of signing the power of attorney;
- e) Signature(s), full names, titles and seals (if any) of the legal representative of the authorize party and of the new representative or re-authorized party (in case of replacement of representative or re-authorization).

4.3 The date on which the power of attorney effects a transaction with the NOIP shall be determined as follows:

- a) The date on which the NOIP receives a valid power of attorney;
- b) The date on which the NOIP receives a valid request for replacement of representative or re-authorization;
- c) The date on which the NOIP receives a request for adjustments to the information relating to the scope of authorization, premature termination of the power of attorney, change of the address of the authorized party;
- d) The power of attorney may be filed later than the filing date but not more than 01 month from the filing date. For the complaint, the abovementioned duration is 10 working days.

Before the date on which the application is considered valid, the NOIP shall make a transaction with the person claiming to be the representative of the applicant (specified in the form) in order to follow procedures for formal examination to conclude whether the application is valid or not, and the legality of representative status.

4.4 All transactions made by any authorized party within the scope of authorization at any time shall be treated as the transaction made on behalf of the applicant, carrying the rights and obligations of the applicant. In case of replacement of representative or re-authorization, the new representative or re-authorized party shall continue the representation with all matters arising from transaction made between the previous authorizing party and the NOIP.

At any time during the application processing, the NOIP shall only make transaction with the last new representative or the re-authorized party in each specific task or stage authorized to represent if the application authorizes two or more representatives to perform different tasks or stages.

4.5 If the scope of authorization specified in the power of attorney covers multiple separate procedures and the original of the power of attorney has been submitted to the NOIP, the

authorized party, when following the next procedures, must submit the copy of the power of attorney and specify the serial number of the application containing that power of attorney.”.

**5. Point 5.1 is amended as follows:**

“5.1 The applicant and his/her representative shall ensure the truthfulness of information and documents provided for the NOIP in the course of industrial property registration according to the following regulations:

- a) All transaction documents must bear the signature of the applicant or his/her representative and the seal of the organization (if any). If certification of a notary public or another competent authority is required, such certification must be obtained as prescribed;
- b) All Vietnamese translations of foreign language documents must be guaranteed by the applicant or his/her representative to be verbatim translations of the original documents.
- c) In case the representative of the applicant is the industrial property representation service provider, the representative of that provider must obtain the industrial property representation service practice certificate.”.

**6. Point 6 is amended as follows:**

“6. Processing of the third party’s opinions before the issuance of the decision on the grant of protection certificates

6.1 From the date on which the application for registration of industrial property is published in the Industrial Property Official Gazette to the date prior to the issuance of a decision on the grant of a protection certificate, any organization or individual may send the NOIP their written opinions on the registration right, priority right, protection conditions and other issues concerning the application for registration of industrial property as prescribed in Article 112 of the Law on Intellectual Property. The person having a dissenting opinion against the issuance of the protection certificate must pay fees for processing of the dissenting opinion. The written opinion of the third party shall be treated as an information source serving the processing of the application for registration of industrial property.

6.2 If considering the opinion of the third party grounded, the NOIP shall notify the applicant of such opinion and set a time limit of 01 month from the date of notification in order for the applicant to send a written response. After receiving the written response sent by the applicant, when necessary, the NOIP shall send such written response to the third party and set a time limit of 01 month from the date of notification in order for the third party to send a written response. After the abovementioned time limit, the NOIP shall process opinion of the applicant and the third party according to the evidence and arguments provided by the parties and documents included in the application. The third party shall be also informed of the results of substantive examination of corresponding application.

6.3 If considering the opinions of the third party groundless, the NOIP is not required to notify the applicant of those opinions but shall notify the third party of its refusal to consider the opinions, clearly stating the reason thereof.

6.4 If opinions of the third party are related to the registration right, when finding it impossible to determine whether such opinions are grounded or not, the NOIP shall notify the third party so that the latter can file a lawsuit to a competent court in accordance with regulations of the Civil Procedure Code. Within 01 month from the date on which the NOIP issues the notice, if the third

party fails to send the NOIP the copy of the notice of case acceptance of the court, it will be considered that the third party has dropped the lawsuit and continue to process the application without the third party's opinions. If the NOIP receives such copy within the abovementioned time limit, the NOIP shall suspend the application processing until the results of dispute settlement by the court are obtained. After the results of dispute settlement by the court are obtained, the application processing shall be resumed in accordance with those results.

6.5 When necessary and at the request of both parties, the NOIP shall organize a face-to-face meeting between the third party and the applicant to further clarify the dissenting opinion.

6.6 The time limit for response to the third party's dissenting opinions by the applicant shall not be added to the time limit for completion of relevant procedures by the NOIP to according to regulations."

**7. Point 7 is amended as follows:**

a) Point 7.1.a (ii) is amended as follows:

"(ii) Documents, specimen and information disclosing the industrial property object eligible for registration;

To be specific: for an application for invention registration, a description of the invention is required; for an application for industrial design registration, a set of photos or a set of drawings and a description of the industrial design are required; for an application for trademark registration, the trademark specimen and list of goods and services bearing the trademark (required to be included in the form) are required; for an application for GI registration, name of the product bearing the GI (required to be included in the form) and a description of particular characteristics and quality of products bearing the GI and a map of the geographical area subject to the GI are required;"

b) Point 7.1.b (iv) is amended as follows:

"(iv) Written permission of the People's Committees of provinces and central-affiliated cities for use of geographical name or other geographical indications of local specialties for trademark registration in accordance with regulations of Point 37.7.a of the Circular (if the registered trademark is a collective trademark, a certification trademark containing a geographical name indication or other geographical indications of the local specialties)."

c) Point 7.2.b (iii) is amended as follows:

"(iii) All documents of the application must be presented in the portrait format (particularly, drawings, figures, charts and tables may be presented in the landscape format) on A4 paper sheets (210mm x 297mm), the document that is a map of geographic area may be presented on A3 paper sheets (420mm x 297mm) of which the top, bottom, left and right margins shall be all 20 mm, Times New Roman font shall be used and not smaller than 13mm, except for accompanied documents whose origin is not intended to be included in the application;"

d) Point 7.2.b (vii) is amended as follows:

"(vii) Terms used in the application must be uniform and common ones (other than dialects, rare words and coined words). Symbols, units of measurement, electronic fonts and spelling rules used in the application must be conformable to Vietnam standards;"

dd) Point 7.2.d is amended as follows:

“d) The form and other documents of the application must contain sufficient mandatory and consistent information; the Vietnamese translations of the documents must be true to the original documents; the power of attorney must specify the contents prescribed in point 4.2 of this Circular.”.

e) Point 7.2.e is amended as follows:

“e) The object(s) stated in the application must be accurately classified according to international classification prescribed in Points 23.5, 33.4 and 37.4.e of this Circular. If the applicant does not classify himself/herself or classifies inaccurately, the NOIP shall do this and the applicant shall pay fees for international classification as prescribed.”.

g) Point 7.3.c is amended as follows:

“c) Documentary evidences for the grounds for enjoying priority right: The certification by the application-receiving authority of the copies of the first application(s), except for the international patent application filed under the Patent Cooperation Treat; the list of goods and services included in the first application for trademark registration; the paper on transfer of the priority right in case the applicant enjoys that right from another person).”.

#### **8. Point 8 is amended as follows:**

“8. Fees and charges for registration of industrial property

8.1. The applicant and user of the industrial property services shall pay fees and charges as prescribed by the Ministry of Finance and other service fees as prescribed.

8.2 Collection of fees and charges

a) When receiving an application or a request for carrying out the procedures requiring fee and charge payment, the NOIP shall request the applicant to pay fees and charges as prescribed (issue a receipt);

b) Upon collection of fees and charges, the NOIP shall make 02 copies of receipt as evidences of fee and charge payment, which specify the collected fees or charges. 01 copy shall be given to the fee or charge payer and 01 shall be included in the application to serve formal examination. An invoice prescribed by the Ministry of Finance shall be issued to the fee or charge payer;

c) In case fees or charges are paid by post or directly to the account of the NOIP, the applicant must submit the copy of the receipt, enclosed with the application together with the application and other documents;

d) If fees and charges are yet to be fully paid according to regulations, the NOIP shall inform the applicant.

8.3 Refund of paid fees and charges

a) Except for the cases specified in Point 8.3 b below, the fees or charges paid for each procedure during application processing shall not be refunded if such procedure has been initiated. The filing charges shall not be refunded in any circumstances;

b) Overpaid amounts collected by NOIP shall be refunded at the request of the applicant;

c) In case of acceptance of the request for fee and charge refund, the NOIP shall send a fee and charge refund notice to the applicant, clearly stating the refunded amount;

d) In case of rejection of the request for fee and charge refund, the NOIP shall send a written notice to the applicant, clearly stating the reason for rejection.”.

**9. Point 9 is amended as follows:**

“9. Time limit

9.1 The time limits specified in the Law on Intellectual Property, the Decree. No. 103/2006/ND-CP and this Circular shall be determined according to the time limit regulation of the Civil Code.

9.2 The time limit for the applicant and relevant parties to file and amend documents or give opinions may be extended once for a period of time equal to the set time limit specified in the notice of the NOIP, provided that the applicant submits a written request for extension before the date of expiration of the set time limit and pays fees for extension as prescribed.

9.3 After the set time limit (including the extension duration prescribed in this point), if the applicant fails to amend his/her documents or give any response, the NOIP shall issue a rejection decision regarding each corresponding procedure and the applicant may not amend the documents or give his/her opinions, except for the case specified in Point 9.4 below.

9.4 The aforementioned time limit excludes the period over which a force majeure event or objective obstacles makes an organization or individual fail to exercise their rights and fulfill their obligations if such organization or individual makes a request and provides legitimate evidence. If such a request is granted, the NOIP shall revoke the rejection decision.

9.5 The force majeure event an event (such as natural disasters or conflicts) that occurs objectively and remains unforeseeable and irremediable despite every necessary measure has been taken within permitted capacity.

Objective obstacles are the obstacles caused by objective circumstances rendering persons with rights and obligations unable to know that their legitimate rights and interests are infringed upon or to exercise their rights or perform their obligations.

9.6 The applicant may request the NOIP to carry out the procedures before the set deadline and shall pay prescribed fees if the request is accepted. In case of rejection of the request, the NOIP shall send a written notice to the applicant, clearly stating the reason thereof.”.

**10. Point 11 is amended as follows:**

“11. General procedures

All types of applications for registration of industrial property shall be processed by the NOIP in the following order: receipt of applications; formal examination of applications; publication of valid applications; substantive examination (except for the applications for registration of layout design which are not subject to the substantive examination); grant of or refusal to grant protection certificates; registration and publication of the decision on the grant of protection certificate. For the international application for trademark registration designating Vietnam, the processing procedures are specified in Point 41.6 of this Circular.”.

**11. Point 12.1 is amended as follows:**

“12.1 The application may be filed at the NOIP or other receiving points established by the NOIP. The application may be filed by post to the abovementioned receiving points. The NOIP shall not return the filed documents (except for the originals filed for comparison).”

**12. Point 13 is amended as follows:**

a) Point 13.2.b is amended as follows:

“b) The form contains insufficient information on the author (for the applications for registration of invention, industrial design or layout design), on the applicant or his/her representative, the signature and/or seal (if any) of the applicant or his/her representative;”.

b) Point 13.2.h is added as follows:

“h) The application is filed against the regulation on control of security of the invention before being registered internationally according to Clause 2, Article 23b of the Decree No.103/2006/ND-CP, including the international application filed directly to the International Bureau.”.

c) Point 13.3 is amended as follows:

“13.3 Errors in applications during formal examination

An application is considered having errors in the following cases:

a) The application fails to satisfy the requirements specified in Point 7.2 of this Circular (the application contains an insufficient number of copies of any of mandatory documents; the application fails to satisfy the uniformity requirement; the application fails to satisfy the requirements for the presentation format; the application for trademark registration fails to clearly state the trademark to be registered, lacks the trademark description; goods and services bearing the trademark are not classified or are classified in an inaccurate manner; the application lacks translations of documents relating to enjoyment of priority right (if necessary); information on the applicant in different documents is inconsistent or revised or not properly certified, etc.);

b) The filing charges, fees for publication and substantive examination of applications and fees for information search serving examination have yet to be fully paid, except for the fees for substantive examination of the application for invention registration in case substantive examination is not required.

c) There is no power of attorney or the power of attorney is invalid (if the application is filed through a representative).”;

d) Point 13.5.c is amended as follows:

“c) The date of priority according to the priority claim shall be determined according to the first application(s) filed in Vietnam in accordance with the principles specified in Article 91 of the Law on Intellectual Property and corresponding regulations specified in Points b, c and dd, Clause 1, Article 10 of the Decree No. 103/2006/ND-CP.”.

dd) Point 13.6 is amended as follows:

“13.6 Notification of results of formal examination and issuance of decision on acceptance of valid applications

a) In the case mentioned in Point 13.2 of this Circular or the application contains errors specified in Point 13.3 of this Circular, the NOIP shall send the applicant a notice of results of formal examination and rejected application. The notice must specify name and address of the applicant; name of the industrial property representation service provider (if the application is filed through such provider); name of the object stated in the application; the filing date and serial number of



the application; errors and reasons for which the application is rejected, and a 02-month time limit from the date of issuing the notice shall be set in order for the applicant to give his/her opinions or correct errors.

For the documentary evidences for the grounds for enjoying the priority right, the applicant is allowed to supplement them within 03 months from the filing date.

b) In case the application is valid, the NOIP shall issue a decision on acceptance of valid application to the applicant, specifying name and address of the applicant, name of the authorized representative (if any) and information on the object stated in the application, the filing date and serial number of the application and the date of priority. In case a priority claim is not accepted, the application is still considered valid unless the application contains other errors that affect its validity, and the reason for non-acceptance must be clearly stated.”.

e) Point 13.7 is amended as follows: “13.7 Rejection of applications

If the applicant to whom the NOIP has sent a notice of results of formal examination and rejected application according Point 13.6.a of this Circular fails to correct errors or unsatisfactorily corrects errors or expresses no dissenting opinion or an unreasonable dissenting opinion within the set time limit, the NOIP shall issue a decision on rejected application to the applicant.”.

### **13. Point 14 is amended as follows:**

a) Point 14.1 is amended as follows:

“14.1 The information on the application accepted as invalid shall be published in the Industrial Property Official Gazette by the NOIP. The application shall pay fees for publication of application.”.

d) Point 14.3 is amended as follows: “14.3 Contents of publication of applications

a) Information relating to valid application, including the secondary applications published in the Industrial Property Official Gazette, includes information relating to validity of the application in terms of formality specified in the decision on acceptance of valid applications; name and nationality of the author of invention, industrial design and layout design; information relating to valid applications (transfer of applications, submission of secondary applications, serial numbers of the secondary application, etc.); invention abstracts enclosed with drawings (if any); sets of photos or drawings of industrial design; specimen of trademark and enclosed list of goods and services; summaries of particular characteristics and names of products bearing GIs.

b) The amendments to application and changes to information specified in Point a above shall be also published in the Industrial Property Official Gazette.”;

c) Point 14.4 is amended as follows:

“14.4 Access to information on published valid applications

Everyone may access detailed information on the nature of the objects stated in the applications published in the Industrial Property Official Gazette or request the NOIP to provide such information and is liable to pay fees for information provision according to regulations.”.

### **14. Point 15 is amended as follows:**

a) Point 15.2.a is amended as follows: “15.2 Use of information search results

a) During the substantive examination of the application for registration of invention/industrial design with a claim for priority, the NOIP may use the results of information search and refer to results of substantive examination of the corresponding application filed overseas.”.

b) Point 15.3 is amended as follows:

“15.3 Correction of errors, explanation of contents of applications, provision of information

a) In case of errors or insufficient disclosure of the nature of objects stated, the NOIP shall send a written notice specifying errors to the applicant or request the applicant to explain the contents of his/her application, provide information pertaining to the nature of objects stated in the application and set a time limit of 03 months from the date of issuing the written notice in order for the applicant to take remedial measures;

b) All amendments to erroneous documents included in the application shall be made by the applicant himself/herself. The NOIP shall only make those amendments if the applicant so requests in writing. The applicant shall pay fees for examination of the written request for amendments as prescribed. The written request for amendments to the application shall be enclosed with relevant documents included in the application and regarded as official documents to be included in the application.

c) Point 15.7 is amended as follows:

“15.7 Tasks for completion of substantive examination

a) Notification of results of substantive examination

At least on the date of expiration of the time limit for substantive examination specified in Point 15.8 of this Circular, the NOIP shall send the applicant one of the following notices:

(i) If the object stated in the application fails to satisfy the protection conditions, the NOIP shall issue a notice of results of substantive examination, specifying the rejection of application and reason(s), and possibly providing guidance on adjustment to the protection scope (volume) and shall set a time limit of two months from the issuance date of the notice in order for the applicant to give opinions;

(ii) If the object stated in the application satisfies the protection conditions but the application still contains errors, the NOIP shall issue a notice of results of substantive examination, specifying the rejection of application and errors in the application and set a time limit of 02 months from the issuance date of the notice in order for the applicant to provide explanations or correct errors;

(iii) If the object stated in the application satisfies the protection conditions or the applicant satisfactorily corrects errors or provides reasonable explanations within the time limit specified in the Points 15.7.a (i) and (ii) above, the NOIP shall issue a notice of results of substantive examination. To be specific:

- For the application mentioned in Point 15.6.dd of this Circular: the notice shall specify that the application is granted and the applicant must pay charges for grant of protection certificates, fees for publication of decision on grant of protection certificates, fees for registration of decision on grant of protection certificates charges for maintenance of validity of invention protection certificates and first-year annual fee within 03 months from the issuance date of the notice.

- If the trademark has elements ineligible for separate protection, the notice shall specify that the application is granted, explain ineligibility for separate protection, and that the applicant may express his/her opinion within 03 months;

- For the application not mentioned in Point 15.6.dd of this Circular: The notice of resumption of application processing prescribed in Point 15.6.e of this Circular shall be issued.

b) Upon the expiration of the time limit prescribed in 15.7.1 (i) and (ii), if the applicant fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion, within 15 working days from the expiration of the abovementioned time limit, the NOIP shall issue a decision on rejected application.

If the applicant finds or provides new facts (which have not been considered during the examination) and which may affect the examination results, the NOIP shall, at the request of the applicant, consider revoking the decision on rejected application and restore the examination.

c) If the applicant fails to pay charges for grant of the protection certificate, fees for publication of the decision on grant of the protection certificate or fees for registration of decision on grant of the protection certificate within the time limit specified in Point 15.7.a (iii) above, within 15 working days after the expiration of the corresponding time limit, the NOIP shall issue a decision on rejected application. For the invention registration application, if the applicant fully pays fees for grant of the protection certificate, fees for publication of the decision on grant of the protection certificate, fees for registration of the decision on grant of the protection certificate within the time limit specified in Point 15.7.a (iii) above but fails to pay fees for maintenance of the first year validity of invention patent or utility solution patent, such protection certificate shall be still granted but becomes invalidated right after the date of grant.”.

d) Point 15.8.b is amended as follows:

“b) In the cases where the NOIP issue a notice as prescribed in Point 15.7.a (i) and (ii) of this Circular, time limit for the applicant to respond shall be added to the duration of substantive examination. Such time limit shall be construed as follows:

(i) The time limit determined from the issuance date of the notice to the date on which the applicant must respond to the notice; or

(ii) The time limit set in the notice (including the time limit extended as prescribed) in case the applicant does not respond to the notice.”.

### **15. Point 16 is amended as follows:**

“16. Application re-examination

16.1 Re-examination of an application due to dissenting opinion after the issuance of a notice of granted/rejected application

a) An application according to Clause 4, Article 117 of the Law on Intellectual Property shall be re-examined in the cases mentioned in Point (i) and compliant with the conditions mentioned in Points (ii) and (iii) below:

(i) A written opinion is sent by the applicant to the NOIP during the period from the issuance date of a notice of granted/rejected application to the date prior to the issuance of a decision on granted/rejected application; or a written opinion is made by a third party, expressing his/her/its

dissenting opinion on the grant of the protection certificate and specifying justifiable reason(s) for his/her/its late response;

(ii) The opinion mentioned in Point 16.1.a (i) above shall be well-grounded and supported by evidences or references to reliable information sources;

(iii) Arguments or evidences for the opinion mentioned in Point 16.1.a (i) above must be different from those previously provided (if any), or though they are not different from the previously provided ones but the NOIP has yet to give a response as prescribed in Point 6.2 of this Circular.

b) The time limit for application re-examination is specified in Clause 3, Article 119 of the Law on Intellectual Property. To be specific:

(i) For an invention, within 12 months;

(ii) For a trademark, within 06 months;

(iii) For an industrial design, within 04 months and 20 days;

(iv) For a GI, within 04 months.

For complicated cases involving multiple facts which need to be verified or require expert's opinions, that time limit may be extended but must not exceed the time limit for initial examination according to Clause 2, Article 119 of the Law on Intellectual Property.

c) Contents of and procedures for re-examination are specified in Points 15.6 and 15.7 of this Circular.

d) An application and each third party may be re-examined once.

16.2 Re-examination of an application due to a request for narrowing the scope of protection by the protection certificate holder

If a protection certificate holder requests narrowing of the scope of protection of industrial property rights according to Clause 3, Article 97 of the Law on Intellectual Property, the NOIP shall carry out a substantive re-examination of the corresponding application according to the contents and procedures specified in Points 15.6 and 15.7 of this Circular, provided that the requester pays fees for request for narrowing of the scope of protection and other fees and charges as prescribed."

**16. Point 17 is amended as follows:**

"18. Amendments/conversion/transfer of applications/change of the applicant/withdrawal of applications/submission of secondary applications

17.1 Amending applications:

a) Before the NOIP issues a decision on its rejection of an application, a decision on granted/rejected application, the applicant may amend documents included in the application on his/her own initiative or at the request of the NOIP.

The person requesting amendments to the application must shall pay fees for examination of the request as prescribed, except for the case prescribed in Point h below. If these amendments must be published as prescribed in Point 14.3.b of this Circular, the requester must pay fees for

publication of amendments as prescribed. In case of request for correction of errors made by the NOIP, the requester shall not pay the abovementioned fees.

b) In response to a request for amendments to the following documents, the applicant must submit copies of the amended corresponding documents enclosed with a detailed written explanation of the amended contents versus the initially submitted documents:

(i) Invention description or abstract, for the application for invention registration;

(ii) 04 sets of photos or sets of drawings and a description of the integrated circuit manufactured according to the layout design, for the application for layout design registration;

(ii) 04 sets of photos or 04 sets of drawings and a description, for the application for industrial design registration;

(iv) 05 specimens of trademark, list of goods and services bearing the trademark, for the application for trademark registration;

(v) A description of the nature, quality and reputation of the product and a map of the geographical area subject to the GI.

c) The amendment to an application must not expand the scope of protection (volume) disclosed in the description, for the application for invention registration, in the description and sets of photos/drawings, for the application for industrial design registration, in the trademark and in the list of goods and services, for the application for trademark registration, and must not change the nature of the object stated in the application. The adjustment expanding the scope of protection (volume) or changes the nature of the object shall not be accepted. The applicant shall file a new application and all procedures shall be carried out anew;

d) The applicant may request correction of errors in the name and address of the applicant, name and nationality of the author of invention, layout design or industrial design;

dd) All requests for amendments must be made into a written document according to the Form 01-SDD provided in the Appendix B of this Circular. A request may be made for adjustments to the same content related to multiple applications, provided that the requester must pay fees for request for amendments to applications according to the number of corresponding applications;

e) If the applicant amends the documents included in the application on his/her own initiative after the NOIP issues a decision on acceptance of valid application, the amendments shall be made as prescribed in Points 13.2, 13.3 and 13.6 of this Circular.

Amended contents shall be published in the Industrial Property Official Gazette as prescribed in Point 14 of this Circular and the applicant must pay prescribed fees for such publication;

g) In case the request for adjustments to the application is filed after receipt of the notice of granted application, the application shall be re-examined in the following cases:

(i) Adjustments to the information relating to the nature of the object stated in the application: a description of the invention; a description, sets of photos/drawings of the industrial design; specimen of the trademark, list of goods and services bearing the trademark, regulations on use of the collective trademark or certification trademark, a description of the nature, quality and reputation of the product bearing the GI and a map of the geographical area subject to the GI;

(ii) Change of the trademark applicant.

h) The amendment to an application, including change of the authorized person, which is made by the applicant on his/her own initiative or at the request of the NOIP, must be made in writing, specifying the amended contents, and enclosed with an fee receipt as prescribed. Documents containing amendments to the application are specified in Points 7 and 10 of this Circular.

#### 17.2 Submission of secondary applications

a) Before the NOIP issues a decision on its rejection of an application, a decision on granted/rejected application, the applicant may, on his/her own initiative or at the request of the NOIP, submit a secondary application (for one or several technical solutions contained in an application for invention registration, one or several industrial designs contained in an application for industrial design registration, one or several components of a trademark or part of the list of goods and services contained in an application for trademark registration into one or several new applications, called “secondary application”);

b) A secondary application must bear a new serial number and is entitled to the date of filing or date(s) of priority (if any) of the primary application; and shall be published as prescribed in Point 14 of this Circular after the issuance of the decision on acceptance of valid application;0}

c) For each secondary application, the applicant shall pay filing fees and all fees and charges for procedures carried out independently from the primary application (except for the procedures that are already completed when submitting the primary application and not required to be carried out again when submitting the secondary application) but shall be exempted from fees for examination of the priority claim (except for submission of secondary application for industrial design due to inconsistency). The secondary application shall be subject to formal examination and further processed according to the procedures not yet completed for its primary application. The secondary application shall be republished and the applicant shall pay fees for publication if the secondary application is submitted after the NOIP issues a decision on acceptance of valid application for primary application;

d) The primary application (after being submitted) shall be further processed according to the procedures for adjustment to the application. After following the procedures for adjusting the primary application, the NOIP shall issue a notice on recognition of adjustments to the application, publish such adjusted contents in case the primary application has been issued with the decision on acceptance of valid application and the applicant shall pay fees for examination of the request for adjustments to the application.

#### 17.3 Transformation of applications

a) Before the NOIP issues a decision on rejected/granted application, the applicant for invention registration may transform the application for an invention patent into one for a utility solution patent or vice versa according to Point dd, Clause 1, Article 115 of the Law on Intellectual Property, provided that the applicant pays fees for filing of the transformed application as prescribed;

b) After receiving a valid request for application transformation, the NOIP shall continue carrying out the procedures for processing the transformed application according to corresponding regulations but shall not carry out again the procedures already completed for the application before the conversion request is made.

#### 17.4 Request for recognition of change of applicant

a) Before the NOIP issues a decision on its rejection of an application, a decision on granted/rejected application, the applicant may request the NOIP to recognize the change of applicant according to the transfer, inheritance, succession or decision of a competent authority;

#### b) Transfer of applications

(i) Documents on transfer of the application for industrial property registration (original or copy certified by the notary public or competent authority) must contain at least:

- Names and addresses of the transferor and transferee;

- The number of transferred applications or information sufficient for determination of such applications;

(ii) Request for recognition of application transfer must be made using the Form 02-CGD provided in the Appendix B of this Circular. The applicant may request transfer of multiple applications of the same applicant in a form, provided that he/she pays fees for examination of the request for application transfer according to the number of corresponding applications;

(iii) In case the request for transfer of the application for trademark registration is filed after the issuance of the notice of granted application, the application for trademark registration shall be re-examined and the transferred contents shall be published. The applicant must pay prescribed fees for application examination and publication.

#### c) Change of the applicant due to inheritance, succession or decision of the competent authority

(i) The applicant may request the change of the owner of the application for industrial property registration on his/her own initiative according to inheritance or succession of property upon consolidation, merger, full division or partial division of the juridical person, joint venture, association or establishment of a new juridical person of the same owner, conversion of kind of business or judicial decision or competent authority's decision.

(ii) The procedures specified in Point 17.4.c (i) above are the same as those for adjustments to the application specified in Point 17.1 of this Circular.

#### 17.5 Withdrawal of applications

a) The withdrawal of the application shall be made by the applicant or the representative authorized by the applicant through the written declaration. For the application filed through the representative, the power of attorney shall specify the authorization for application withdrawal or shall be enclosed with a letter specifying the number of applications to be withdrawn;

#### b) Within 02 months since receipt of the request, the NOIP shall:

(i) issue a notice of acceptance of application withdrawal if the request is compliant with Point 17.5.a of this Circular and terminate the processing of application and record the application withdrawal in the application. The withdrawn application for industrial property registration shall not be recovered but shall be used as the basis for priority claim according to Clause 3, Article 116 of the Law on Intellectual Property; or

(ii) issue a notice of its rejection of request for application withdrawal because the request is not compliant with Point 17.5.a mentioned above."

#### **17. Point 18 is amended as follows:**

a) Point 18.2.a is amended as follows:

“a) Within 15 working days from the date on which the applicant files sufficient application and pays fees and charges within the time limit, the NOIP shall grant the protection certificate as prescribed in Article 118 of the Law on Intellectual Property.”;

b) Point 18.3 is amended as follows:

“18.3 Grant of protection certificate duplicates and regrant of protection certificates

a) In case the industrial property right is under co-ownership, the protection certificate shall only be granted to the first person included in the list of co-applicants.

Other co-holders may request the NOIP to grant duplicates of the protection certificate, provided that they pay fees therefor.

b) In case the protection certificate/duplicate of protection certificate is lost or so damaged, torn, stained or faded that it can no longer be used, is separated, thereby breaking the seal, the industrial property right holder who has been granted a protection certificate/duplicate of protection certificate may request the NOIP to regrant the protection certificate/duplicate of protection certificate but shall pay regrant fees.

c) Request for grant of duplicates of protection certificates or regrant of protection certificates/duplicate of protection certificates

The request for grant of duplicates of protection certificates or regrant of a protection certificate/duplicate of protection certificate must be made into a written document unless it is already specified in the industrial property object registration form. A request includes 01 set of following documents:

(i) An application form for grant of duplicates of protection certificates or regrant of a protection certificate/duplicate of protection certificate, made using the Form 03-PBVB/GCN provided in the Appendix C of this Circular;

(ii) 02 specimens of trademark; 02 sets of photos or 02 sets of industrial design drawings identical to the specimens of trademark, set of photos or industrial design drawings in the original protection certificate;

c) A power of attorney (in case the request is filed through a representative);

(iv) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).

d) Handling a request for grant of duplicates of protection certificates or regrant of protection certificates/duplicate of protection certificates

(i) Within one month after receiving the application, the NOIP shall consider the request for duplicates of protection certificates or regrant of a protection certificate/duplicate of protection certificate. If that request satisfies the abovementioned requirements, the NOIP shall issue a decision on the duplicates of protection certificates or regrant of a protection certificate/duplicate of protection certificate and record it in the section of registration of the corresponding protection certificate in the National Register of Industrial Property;



(ii) A protection certificate duplicate must contain all information of the corresponding protection certificate and the indication “Phó bản” (“Duplicate”). (ii) A regranted protection certificate/protection certificate duplicate must contain all information of the initially granted protection certificate/protection certificate duplicate and the indication “Bản cấp lại” (“Regranted”);

(ii) If the request for grant of duplicates of protection certificates or regrant of protection certificates/duplicate of protection certificates fails to satisfy the requirements specified in Point 18.3.c mentioned above, the NOIP shall issue a notice and set a time limit of 02 months from the issuance date of the notice in order for the requester to correct errors or express his/her dissenting opinion. b) After the abovementioned time limit, if the applicant fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion, the NOIP shall issue a decision on rejection of the application for grant of the duplicate of protection certificate or regrant of the protection certificate/duplicate of protection certificate, specifying reasons.”.

**18. Point 19 is amended as follows:**

a) Point 19.1.b is amended as follows:

“b) The national registers specified in Points 19.1.a (i), (ii), (iii), (iv), (v) and (vi) mentioned above contain various sections corresponding to each protection certificate and each section includes:

(i) Information on the protection certificate: serial number and date of grant; name of the protected object, protection scope/volume and effective period; name and address of the protection certificate holder/the registrant of the GI, name and nationality of the author of the invention, layout design or industrial design;

(ii) Information on the application for grant of the protection certificate (serial number, date of submission, date of priority, name of the industrial property representation service provider (if any));

(iii) All information on the adjustment to the protection certificate, the validity status of the protection certificate (maintenance, extension, termination of validity, and invalidation); assignment of the industrial property right, licensing of the industrial property object; number of regrants, date of regrant, change of industrial property representation service provider (if any).”.

b) Point 19.1.d (iii) is amended as follows:

“(iii) Information on the change in the list of industrial property representatives (grant, regrant or revocation of practice certificates, deletion of name, etc.).

c) Point 19.1.e is amended as follows:

“e. The national registers shall be made by the NOIP and archived in the physical or electronic form or in other media. Any person may refer to the electronic registers (if any) or request the NOIP to grant copies or extracts of the registers but shall pay granting fees.

d) Point 19.2 is amended as follows:

“a) All decisions on grant of protection certificates and decisions on protection of internationally registered trademark shall be published by the NOIP in the Industrial Property Official Gazette

within 02 months from the date of issuing decisions, after the applicants pay the prescribed fees for publication;

b) Information published according to Point 19.2.a mentioned above includes information written in the corresponding decision: invention abstract; set of layout design photos or drawings; set of industrial design photos or drawings; specimens of trademark and list of goods and services bearing the trademark; GI and products bearing the GI.”.

**19. Point 20 is amended as follows:**

a) Point 20.1 is amended as follows:

“20.1 Adjustments to information specified in the protection certificate and narrowing of the scope of the protection

a) Request for adjustments to information specified in the protection certificate and change of the protection certificate holder

The protection certificate holder who is allowed by the State to exercise his/her right to register a GI as prescribed in Article 88 of the Law on Intellectual Property may request the NOIP record changes to the information specified in the protection certificate in the following cases:

(i) Change in the name or address of the protection certificate holder; name and nationality of the author of the invention, layout design or industrial design; change of the representative of the protection certificate holder;

(ii) Change of the protection certificate holder (transfer of ownership due to inheritance, succession, merger, full division, partial division, consolidation, joint venture, association or establishment of a new juridical person of the same owner, conversion of kind of business or judicial decision or competent authority’s decision);

(iii) Adjustments to the description of the nature, quality and reputation of the product bearing the GI, geographical area subject to the GI, and regulations on the use of collective or certification trademarks.

The person requesting recognition of changes in information specified in the protection certificate shall pay fees for request for adjustment to protection certificate, registration fees and fees for publication of a decision on recognition of adjustment to the protection certificate.

The person requesting recognition of changes of the industrial property representative must submit a legal power of attorney of the protection certificate holder and pay fees for recognition of change of the industrial property representative as prescribed.

b) Request for narrowing of the protection scope

The protection certificate holder may request the NOIP to narrow the protection scope as prescribed in Article 3, Article 97 of the Law on Intellectual Property in the following cases:

(i) Request for adjustments to some details without any substantial change in the trademark specimen stated in the certificate of trademark registration;

(ii) Request for exclusion of one or several goods or services or groups of goods or services on the list of goods and services specified in the certificate of trademark registration without any change in the trademark specimen;

- (iii) Request for reduction of one or several independent or dependent points within the (requested) protection scope stated in the invention or utility solution patent;
- (iv) Request for exclusion of one or several industrial design variations, one or several products in the set of products stated in the industrial design patent.

The person requesting narrowing of the protection scope shall pay fees for such request, registration fees and fees for publication of a decision on recognition of adjustments to the protection certificate.

c) Written request for adjustments to the protection certificate

According to the contents to be adjusted as prescribed in Points 20.1.a and 20.1.b mentioned above and Point b, Clause 1, Article 97 of the Law on Intellectual Property, a written request for adjustments to the protection certificate includes the following documents:

- (i) A protection certificate adjustment form made using the Form 01-SDVB provided in the Appendix C of this Circular, specifying the request for recognition of change in the name or address of the protection certificate holder; name and nationality of the author, for the protection certificate granted to an invention/utility solution and layout design; change of the representative of the protection certificate holder; change of the protection certificate holder; request for adjustments to the description of the nature, quality and reputation of the product bearing the GI, the map of the geographical area subject to the GI, or regulations on the use of collective or certification trademarks; or request for narrowing of the protection scope;
- (ii) An original of the protection certificate;
- (iii) Documents certifying the change in the name or address (the originals or copies of the notary public or competent authority); decision on change in the name or address; the business registration certificate that records the name or address change; other legal documentary evidences for the name or address change (certified by the notary public or competent authority) in case the content requested to be adjusted is such name or address;
- (iv) Documentary evidences for the transfer of ownership according to Point 20.1.a (ii) mentioned above, for a request for change of the protection certificate holder (documentary evidences for the inheritance, succession, merger; full division, partial division, consolidation, joint venture, association or establishment of a new juridical person of the same owner, conversion of kind of business or judicial decision or competent authority's decision);
- (v) Documents explaining the adjusted contents in detail;
  - (vi) 05 specimens of the adjusted trademark (for a request for adjustment to trademark details); 05 sets of industrial design photos or drawings (for a request for adjustment to industrial design); 02 descriptions of the nature, quality or reputation of the product bearing a GI, the map of the geographical area subject to the adjusted GI (for a request for adjustment to the GI); or 02 regulations on the use of the adjusted collective trademark, 02 regulations on the use of certification trademark (for a request for adjustments to collective or certification trademarks);
- (vii) A power of attorney (in case the request is submitted through a representative);
- (viii) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).

A protection certificate adjustment form may be made for many protection certificates that have the same content requested to be adjusted, provided that the requester pays fees and charges for each protection certificate.

d) Handling a request for adjustment to the protection certificate

(i) Within 02 months after receiving the application, the NOIP shall consider the request for adjustment to the protection certificate as prescribed in Points 20.1.a (i) and 20.1.a (ii) of this Circular. If the request is considered valid, the NOIP shall issue a decision on adjustment to the protection certificate, register and publish it in the Industrial Property Official Gazette. If the request contains errors or is considered invalid, the NOIP shall issue a notice of rejected application, specifying the reason thereof and set a time limit of 02 months from the issuance date in order for the requester to correct errors or express his/her dissenting opinion. After the set time limit, if the applicant fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or unreasonable dissenting opinion, the NOIP shall issue a decision on its rejection of the request for adjustment to protection certificate.

(ii) For the request for adjustment to the protection certificate prescribed in Points 20.1.a (iii) and 20.1.b, the procedures for re-examination of corresponding applications shall be compliant with Points 15.6 and 15.7 of this Article. The time limit for re-examination shall not be added to the time limit for handling the request for adjustment to the protection certificate.”.

b) Point 20.2.b is amended as follows:

“b) The protection certificate holder shall pay fees for examination of the request for adjustment to the protection certificate according to Clause 1, Article 97 of the Law on Intellectual Property if the error is made by the protection certificate holder. If the error is made by the NOIP, the protection certificate holder is not required to pay the fees.”.

c) Point 20.3 is amended as follows:

“20.3 Maintenance of validity of invention/utility solution protection certificates

a) In order to have the validity of his/her invention/utility solution protection certificates maintained, the protection certificate holder shall submit a form using the Form 02-GH/DTVB, valid power of attorney (in case the request is filed through a representative) and fees for examination of the request for validity maintenance, charges for validity maintenance and fees for use of the protection certificate, registration fees and fees for publication of the notice of maintenance of validity of the protection certificate within 06 months before the expiration of the validity term. The procedures for validity maintenance may be carried out later than the abovementioned time limit but within 06 months after the expiration of the current validity term but the protection certificate holder shall pay an extra 10% for each month of late payment.

(b) The NOIP shall consider the request for validity maintenance within 01 month since receipt of the request and fees and charges prescribed in Point 20.3.a mentioned above. If the request is considered valid, the NOIP shall record the validity maintenance of protection certificates in National Register of Inventions, issue a notice of the validity maintenance of protection certificates and publish it in the Industrial Property Official Gazette.

If the request contains errors or is invalid, the NOIP shall issue a notice and set a time limit of 02 months from the issuance date in order for the requester to correct errors or express his/her dissenting opinion. After the set time limit, if the requester fails to correct errors or

unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion, the NOIP shall issue a decision on its rejection of the request for maintenance of validity of protection certificates.”.

d) Point 20.4 is amended as follows: “20.4 Extension of validity of protection certificates

a) The validity of invention patents, utility solution patents and certificates of registration of layout designs shall not be extended.

The validity of an industrial design patent may be limited to 02 consecutive extension terms of 05 years each. If the protected industrial design has multiple variations of an industrial design, the validity of the patent may be extended for all or some variations in which there must be basic variation.

The validity of a certificate of trademark registration may be limited to multiple consecutive extension terms of 10 years each for the whole or part of the list of goods and services.

b) To have the validity of an industrial design patent or certificate of registration of trademark extended, the patent or certificate holder shall, within 06 months before the date of expiration of the validity of the patent or certificate, submit an application for extension to the NOIP and pay fees for examination of the request for extension, fees for extension of the protection certificate validity, fees for use of the protection certificate, registration fees and fees for publication of the decision on extension of the protection certificate validity.

The application for extension may be submitted later than the abovementioned time limit but within 06 months after the expiration of the protection certificate and the protection certificate holder shall pay an extra maintenance fee 10% for each month of late payment.

c) Applications for validity extension

An application for extension of validity of a protection certificate includes 01 set of the following documents:

(i) An application form for extension of validity of the protection certificate, made using the Form 02-GH/DTVB provided in the Appendix C of this Circular;

(ii) An original of the protection certificate (if the extension is requested to be recognized in the protection certificate);

(iii) A power of attorney (in case the application is filed through a representative);

(iv) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).

d) Processing of applications for validity extension

The NOIP shall consider the application for validity extension within 01 month since receipt of the application. If the application is error-free, the NOIP shall issue a decision on validity extension, record it in the protection certificate (if requested), register and publish it in the Industrial Property Official Gazette within 02 months from the issuance date.

After the completion of extension procedures, if the protection certificate holder requests the NOIP to record the decision on validity extension in the protection holder, he/she shall follow the procedures for adjustment to the protection certificate and pay prescribed fees and charges.

The NOIP shall issue a notice of rejected application, specifying reasons thereof and set a time limit of 02 months from the issuance date in order for the requester to correct errors or express his/her dissenting opinion, in the following cases:

- (i) The application for extension is invalid or filed against the regulations;
- (ii) The applicant is not the corresponding protection certificate holder.

After the set time limit, if the requester fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion, the NOIP shall issue a decision on its rejection of the application for extension of validity of protection certificate.”.

**20. Point 21 is amended as follows:**

“21. Termination or invalidation of protection certificates

21.1 Request for termination or invalidation of protection certificates

The organization or individual requesting termination or invalidation of their protection certificates as prescribed in Clause 4, Article 95, Clause 3, Article 96 of the Law on Intellectual Property shall pay fees for the request and fees for examination of the request for termination or invalidation of protection certificates, registration fees and fees for publication of the decision on termination or invalidation of protection certificates.

The request for termination or invalidation of protection certificates shall be handled as prescribed in Articles 95 and 96, Clause 3, Article 220 of the Law on Intellectual Property and this Point.

For the request for invalidation of the protection, the NOIP shall re-examine corresponding applications as prescribed in Points 15.6 and 15.7 of this Circular.

21.2 Applications for termination or invalidation of protection certificates

a) An application for termination or invalidation may invoke the same reason for termination or invalidation of one or more than one protection certificates, if the applicant pays the prescribed fees and charges for each protection certificate.

b) An application for termination or invalidation of protection certificates includes 01 set of the following documents:

(i) An application form for termination or invalidation of the protection certificate, made using the Form 04-CDHB provided in the Appendix C of this Circular;

(ii) Evidences (if any);

(iii) A power of attorney (in case the written request is filed through a representative);

(iv) Written explanation for the request (specifying the serial number of the protection certificate, reason, legal grounds, contents of the request for termination or invalidation of part or whole of the protection certificate) and relevant documents specified in Points 7.2, 22.2 and 22.3 of this Circular;

(v) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).

21.3 Handling the request for termination or invalidation of protection certificates

a) In case the request for termination or invalidation of a protection certificate is made by a third party, the NOIP shall issue a written notice of the third party's opinions to the protection certificate holder and set a time limit of 02 months from the issuance date in order for the protection certificate holder to give his/her opinions. The NOIP may organize a face-to-face meeting between the third party and the protection certificate holder.

b) After considering opinions of the parties, the NOIP shall issue a decision on termination/invalidation of part or whole of the protection certificate or a notice of its refusal to terminate/invalidate part or whole of the protection certificate as prescribed in Clause 4, Article 95 and Clause 4, Article 96 of the Law on Intellectual Property.

The time limit for issuing the decision and notice specified in this Point is 03 months after the expiration of the 02-month time limit specified in Point 21.3.a if the protection certificate holder does not give his/her opinions or from the date on which the protection holder's opinions are received. This time limit may be extended for a maximum of 03 months if the protection certificate holder expressing his/her dissenting opinion on the applicant's opinion makes a request for termination or invalidation of the protection certificate.

If the protection certificate holder declares relinquishment of the industrial property rights as prescribed in Clause 3, Article 95 of the Law on Intellectual Property, the abovementioned time limit shall be 10 working days from the date of receiving the request.

The time for following other relevant procedures necessary for handling the request for termination or invalidation of the protection certificate shall not be added to the abovementioned time limit.

c) If disagreeing with the NOIP's decision on handling of the request for termination or invalidation of the protection certificate, the requester or an involved party may lodge a complaint about that decision or the relevant notice according to the procedures specified in Point 22 of this Circular.

d) The decision on termination or invalidation of the protection certificate shall be recognized in the national register of industrial property and published in the Industrial Property Official Gazette within 02 months from the date of issuing the decision.

#### 21.4 Termination or invalidation of international registration of trademarks

a) For the third party's application for termination or invalidation of international registration of trademark under the Madrid Agreement or the Madrid Protocol, the NOIP shall notify the content of the request for termination or invalidation to the proprietor through the International Bureau and set a time limit of 03 months from the date of notification in order for the proprietor to give his/her opinions;

b) A decision on termination or invalidation of international registration of trademark shall be sent to the International Bureau for completion of the relevant procedures under the Madrid Agreement or the Madrid Protocol and published in the Industrial Property Official Gazette;

c) Other relevant regulations on the processing of the application for termination or invalidation of international registration of trademarks are the same as the regulations on the processing of the application for trademark registration filed according to national formality".

#### **21. Point 22 is amended as follows:**

“22. Complaint and settlement of complaints about the procedures for establishment of industrial property rights

22.1 The person having the right to complain, the matters against which the complaint is filed, the time limit for filing a complaint and the complaint handler

a) The person having the right to complain defined in Clause 1, Article 14 of the Decree No. 103/2006/ND-CP is the applicant and organization or individual that has their rights and interests directly related to the NOIP's decisions and notices specified in Point b below have grounds for the belief that such decisions and notices are unlawful and directly infringes upon their legitimate rights and interests.

b) The decisions or notices against which complaints may be filed according to Clause 1, Article 14 of the Decree No. 103/2006/ND-CP are the NOIP's official decisions or notices on procedures carried out during the processing of the application for registration of industrial property according to corresponding regulations of this Circular, including:

(i) Notice of rejected application (Point 12.2.b);

(ii) Decision on granted application (Point 13.6.b);

(ii) Decision on rejected application (Point 13.7);

(iv) Notice of acceptance or rejection of the request for amendments to applications/transformation of applications/change of applicant/withdrawal of applications (Point 17);

(v) Decision on rejection of the application for grant of a protection certificate (Points 15.7.b and 15.7.c); decision on grant of protection certificates (Point 18.2.a) except for the corresponding protection certificates that may be invalidated as prescribed in Article 96 of the Law on Intellectual Property and Point 21 of this Circular;

(vi) Decision on rejection of the application for protection of internationally registered trademarks (Point 41.6.g); decision on acceptance of protection of internationally registered trademarks (Points 41.6.b, 41.6.dd and 41.6.e) except for the corresponding internationally registered trademark that may be invalidated as prescribed in Article 96 of the Law on Intellectual Property and Point 21 of this Circular;

(vii) Decision on grant of protection certificate duplicates or regrant of protection certificates (Point 18.3.d (i)); decision on rejection of the application for grant of protection certificate duplicates or rejection of the application for regrant of the protection certificate (Point 18.3.d (iii));

(viii) Notice of maintenance of validity of the protection certificate, decision on rejection of the application for maintenance of validity of the protection certificate (Point 20.3.b);

(ix) Decision on extension of validity of the protection certificate, decision on rejection of the application for extension of validity of the protection certificate (Point 20.4.d);

(x) Decision on adjustment to protection certificates, decision on rejection of the request for adjustment to protection certificates (Point 20.1.d (i));



(xi) Decision on termination/invalidation of part or whole of the protection certificate, notice of rejection of the application for termination/invalidation of part or whole of the protection certificate (Point 21.3.b);

(xii) Decision on or notice of processing of applications for termination or invalidation of international registration of trademarks (Point 21.4.b);

(xiii) Other decisions and notices containing the administrative decision. The notices that are aimed at providing information and requires completion of application shall not be treated as administrative decisions and the matters against which the complaint is filed, for example notice of examination results, notice of errors and request for amendments to documents and rejected application, notice of temporary rejection of the application for protection of internationally registered trademarks.

c) The subject of the decision or notice against which the complaint is filed is the application for establishment of industrial property rights when such decision or notice is issued. The following contents specified in the complaint are beyond the scope for settling complaints so they are not accepted during complaint settlement:

(i) Request for amendments to the application for establishment of industrial property rights is regulated in the decisions or notices against which complaints may be filed;

(ii) New contents which the applicant for establishment of industrial property rights who are regulated in the decisions or notices which are complained is yet to provide during the substantive examination but can change such decisions or notices;

(iii) New contents in the complaint that are not searched or inspected by the NOIP during substantive examination of the application for establishment of industrial property rights in case the complaint handler is not the applicant for establishment of industrial property rights and are regulated in the decisions or notices against which complaints may be filed. In this case, the complaint handler may request the NOIP to examine new contents and shall pay fees for such examination as prescribed.

The abovementioned cases satisfying the requirements specified in Points 9.3 and 9.4 of this Circular shall be handled following the procedures therein.

d) A decision or notice is considered unlawful in the following cases:

(i) The decision or notice is issued against the regulations on formality and procedures or ultra vires;

(ii) The decision or notice contains judgements or conclusions that are not conformable to the facts of the case or is implemented against the law;

(iii) The decision or notice is issued according to the examination results and is implemented against the law;

dd) The complaint shall be only filed within the time limit prescribed in Clause 4, Article 14 of the Decree No. 103/2006/ND-CP. If the person having the right to complain cannot file a complaint within the time limit due to objective obstacles or force majeure events prescribed in Point 9.5 of this Circular, the period over which the objective obstacles or force majeure events occur shall not be added to the time limit for filing a complaint, provided that the complaint handler provides reasonable evidences for such situation;

e) The person having the competence to settle the first-time complaint is the Director General of the NOIP; the person having the competence to settle the second-time complaint is the Minister of Science and Technology (below collectively referred to as “the complaint handler”).

## 22.2 Complaint

a) A complaint may be filed against one or several decisions or notices if such decisions or notices contain the same content and reasons for filing a complaint, provided that the complaint handler pays fees for provision of services for settlement of complaints about industrial property rights (if any), including prescribed fees for application examination and information search applicable to the decisions or notices against which complaints may be filed.

b) The complaint must contain the following documents:

(i) A complaint form, made using the Form 05-KN provided in the Appendix C of this Circular;

(ii) A written representation of reasons for filing the complaint (made as prescribed in Point 22.2.c below) and evidences for the complaint (provided as prescribed in Point 22.2.d below);

(iii) A copy of the NOIP’s decision or notice against which complaints may be filed and a copy of the application for registration of industrial property that is regulated in such decision or notice (if the applicant file the complaint for the second time); or documents indicating information about the abovementioned documents;

(iv) A copy of the decision on settlement of the first-time complaint (for a second-time complaint);

(v) A power of attorney (in case the application is filed through a representative); for the second-time complaint, the copy of the power of attorney mentioned in Point 4.5 of this Circular must be certified by the NOIP;

(vi) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP’s account).

c) A written representation of reasons for filing a complaint must specify:

(i) The matters against which the complaint is filed: decision or notice against which complaints may be filed (specify the number, issuance date of decision or notice);

(ii) Reasons for filing a complaint: the regulation violated (name of the document, number of Article and Clause) and infringement upon legitimate rights and interests;

(iii) Contents of the complaint: detailed explanation (enclosed with evidences (if any)) for the unlawful factors of the decision or notice against which complaints may be filed as prescribed Point 22.1.d of this Circular;

(iv) Request of the complaint handler: adjustment or cancellation of the whole or part of the decision or notice against which complaints may be filed;

(v) Enclosed list of evidences (if any).

d) Evidences include documents (proofs) or objects (exhibits) to prove or clarify the complaining reason.

An evidence must satisfy the following requirements:

- (i) It may be a document in a foreign language enclosed with its Vietnamese translation if the complaint handler so requests;
- (ii) If it is a document made and signed by an individual or organization without seal or a foreign individual or organization, the signature of that individual or organization must be certified by a notary public or a competent authority;
- (iii) If it is an information carrier (printed matter, video tape, etc.), the origin and date of distribution or publication of that carrier, or the origin or the date of publication of information stored in that carrier shall be clearly indicated on a case-by-case basis;
- (iv) An exhibit must be accompanied with a written description of its features that are directly related to the contents of the complaint.

### 22.3 Responsibilities of complaint handlers

The complaint handler shall ensure truthfulness of the provided information and evidences and be responsible for consequences of the provision of untruthful information and evidences.

### 22.4 Withdrawal of complaints

- a) At any time, the complaint handler may send a written notice of the withdrawal of his/her complaint. If the withdrawal is made with the applicant's authorization, such authorization must be specified in the power of attorney;
- b) A withdrawn application will not count as a submission. The complaint shall not be returned and the paid fees and charges for settling complaints shall not be refunded to the complaint handler unless the complaint is withdrawn before the issuance date of the notice of acceptance of or refusal to accept the application;
- c) The complaint handler shall issue the decision on termination of complaint settlement in the following cases:
  - (i) The complaint handler withdraws his/her complaint;
  - (ii) The complaint handler has issued a notice of a dialogue twice or requests for clarification of the complained contents, however, the complaint handler has not given any response.

### 22.5 Acceptance of complaints

- a) Within 10 days since receipt of the complaint, the complaint handler shall:
  - (i) issue a notice of his/her refusal to accept the complaint if such complaint about any of the cases prescribed in Point 22.5.b below is filed, specifying reasons for his/her refusal; or
  - (ii) issue a notice of acceptance of the complaint if such complaint is not mentioned in Point 22.5.b below, specifying the date of complaint acceptance and fees for search and/or fees for examination in service of settlement of the complaint corresponding to the complained contents (if any) and set a time limit of 01 month in order for the applicant to pay fees.
- b) A complaint shall not be accepted in the following cases:
  - (i) The matters against which the complaint is filed is not the official decisions or notices prescribed in Point 22.1.b of this Circular;
  - (ii) The decision or notice against which complaints may be filed is not directly related to the complaint handler's legitimate rights and interests;

- (iii) The complaint is filed against the regulation on representation;
- (iv) The complaint bears no signature and seal (if any) or fingerprint of the complaint handler;
- (v) The complaint is filed after the expiration of the time limit, except for the case prescribed in Point 9.4 of this Circular;
- (vi) A second decision on settlement is issued;
- (vii) The complaint has been accepted by the court or settled with a judicial judgment or decision, except for the decision on termination of the court's administrative case;
- (viii) The complaint handler continues to file a complaint after 30 days from the issuance date of the decision on termination of complaint settlement according to Article 10 and Clause 8, Article 11 of the Law on Complaint;
- (ix) The complaint does not state the unlawfulness of the decision or notice against which complaints may be filed and only contains the request for amendments to the application that is regulated in such decision or notice.

The request for amendments to the application that is compliant with the conditions prescribed in Points 9.3 and 9.4 of this Circular shall be handled following the procedures therein.

#### 22.6 Time limit for complaint settlement

- a) The time limit for complaint settlement is specified in Articles 28 and 31 of the Law on complaint;
- b) The following periods shall not be added to the time limit for complaint settlement:
  - (i) The period over which the complaint handler amends the complaint;
  - (ii) The period over which the complaint handler requests the parties to give written response according to Points 22.7 and 22.10.b of this Circular;
  - (iii) The period for information search, re-examination and other services necessary for complaint settlement, but not exceeding the time limit for re-examination prescribed in Clause 3, Article 119 of the Law on Intellectual Property.

#### 22.7 Relevant parties

- a) For an accepted complaint, the person settling complaints shall send a written notice of the complained contents to persons having directly related rights and obligations (hereinafter referred to as “relevant parties”) and set a time limit of 02 months from the issuance date of the notice in order for those parties to give their opinions;
- b) Relevant parties may provide information or evidences for their arguments within the time limit specified in Point 22.7.a above, and the complaint handler shall consider such information or evidences while settling the complaint;
- c) The complaint handler shall send a written notice of the relevant parties’ opinions and set a time limit of 02 months from the issuance date of the notice in order for the complaint handler to give his/her response to the relevant parties’ opinions;
- d) If necessary, the complaint handler shall continue to collect parties' opinions in accordance with the abovementioned procedures and time limit.

After the set time limit, if a party gives no opinions, the complaint shall be settled according to the opinions of the other party.

#### 22.8 Independent consultants, Advisory Council

a) Depending on the complexity of the case, the complaint handler may consult the independent consultants, Advisory Council (including the president and members).

Independent consultant, Advisory Council shall give the complaint handler counsel about technical or legal issues of the complained contents and solutions.

Independent consultants, president and members of the Advisory Council are the persons obtaining suitable professional qualifications, selected from the list of industrial property consultants and other sources (in there are no suitable consultants included in that list)

The NOIP shall take charge and cooperate with Inspectorate of Ministry of Science and Technology in compiling the list of industrial property consultants and publish it in the Industrial Property Official Gazette.

b) An Advisory Council shall be organized and operated according to the following rules:

(i) The Advisory Council is established according to the decision of the complaint handler;

(ii) The Advisory Council is operated in the form of meetings, group discussions and majority voting;

(iii) The parties involved in the case, the parties having relevant rights and obligations may be invited to attend the meeting of the Advisory Council to clarify the facts of the case.

c) The following persons shall not participate in the Advisory Council and work as an independent consultant in a case:

(i) The matters against which the complaint is filed (the person issuing the decision or notice against which complaints may be filed);

(ii) The person that has examined the application for establishment of industrial property rights is related to in the decisions or notices against which complaints may be filed;

(iii) The person that has his/her rights and interests directly related to the compliant case;

(iv) The person that has participated in settling the first-time complaint (for the Advisory Council responsible for the second-time complaint);

(v) The person that may not be objective in a case, if grounds for this are available.

The persons mentioned in Points 22.8.c (i), (ii), (iii) and (iv) shall provide explanation and information relating to their tasks performed during complaint settlement.

d) Opinions of the independent consultants, president and members of the Advisory Council and results of tasks of the Advisory Council shall be made in writing.

#### 22.9 Organization of dialogues

a) The complaint handler shall organize a dialogue as prescribed in Article 30 of the Law on complaint;

b) Independent consultants or members of the Advisory Council (if any) may be invited to attend the dialogue.

## 22.10 Decisions on complaint settlement

- a) According to the results of reconsideration of the decision or notice against which complaints may be filed, the complaint handler shall issue the decision on complaint settlement;
- b) Before issuing a decision on complaint settlement, the complaint handler shall notify the complaint handler or a relevant party of the other party's arguments and evidences used for complaint settlement and complaint settlement conclusions and set a time limit of 01 month from the date of notification in order for the complaint handler and relevant parties to give their opinions;
- c) A decision on complaint settlement must contain the contents defined in Clause 2, Article 31 (for the first-time complaint) or Clause 2, Article 40 (for the second-time complaint) of the Law on Complaint;
- d) For the complaint about any of the cases specified in Point 22.1.c of this Circular, the complaint handler shall decide to:
  - (i) retain or request the retaining of the decision or notice against which complaints may be filed;
  - (ii) set a time limit of 01 month from the issuance date of the decision in order for the complaint handler to submit a request for examination of new facts stated in the complaint mentioned in Point 22.1.c (iii) of this Circular;
  - (iii) inform the complaint handler of the right to file the application for invalidation of the protection certificate and the right to institute administrative lawsuits as prescribed by law.

The NOIP shall examine the new facts as prescribed in Point 22.10.d (ii) according to the procedures for re-examination of the application for establishment of industrial property rights when the third party's opinions are available. The procedures and time limit for examination of new facts are specified in Points 6.2, 6.3, 6.4 and 6.5 and Article 16 of this Circular. According to the examination results, the NOIP shall issue a decision on retaining, adjustment or replacement of the corresponding decision or notice.

22.11 The decision on complaint settlement shall be published on the website of the settling authority within 15 days and in the Industrial Property Official Gazette within 02 months from the date of issuing the decision.

22.12 Validity of the decision or notice against which complaints may be filed and decision on complaint settlement

- a) The decision or notice against which complaints may be filed shall remain valid during the complaint settlement, except for the suspension of implementation according to the complaint handler's decision prescribed in Article 35 of the Law on Complaint
- b) The NOIP shall implement the valid decision on complaint settlement:
  - (i) The decision on first-time complaint settlement of the Director General of the NOIP shall become valid after 30 days from the signing date if the complaint handler does not file a second-time complaint; for the remote and isolated areas, this time limit may be extended but must not exceed 45 days;

(ii) The decision on second-time complaint settlement of the Minister of Science and Technology shall become valid after 30 days from the signing date; for the remote and isolated areas, this time limit may be extended but must not exceed 45 days;

c) The Inspectorate of the Ministry of Science and Technology shall inform the NOIP of the acceptance of the second-time complaint within 10 days from the date of acceptance. In this case, the decision on the first-time complaint settlement of the NOIP shall be invalid. The decision or notice against which complaints may be filed shall remain valid until the decision on the second-time becomes valid;

d) The person filing a second-time complaint shall immediately inform the NOIP of the filing of such complaint.

#### 22.13. Complaint and settlement of complaints about other administrative decisions in industrial property sector

The complaint and settlement of complaints about other administrative decisions in industrial property sector (including the decisions relating to industrial property representation, industrial property assessment, assignment of industrial property rights, etc.) are specified in the Law on Complaint and regulations on complaint and complaint settlement prescribed in this Circular.

#### 22.14 Solutions for limiting complaints arising

a) The NOIP shall carry out the procedures for settlement of the application for termination and invalidation of the protection certificate as prescribed in Point 22.8 of this Circular.

b) The NOIP shall inspect and reconsider the issued decision or notice. If cases against the law are found, remedial measures shall be taken to prevent complaints from arising.

For the decision or notice against which complaints may be filed, the adjustment to contents and validity shall be made when the decision on complaint settlement becomes valid.

c) During complaint settlement, the complaint handler shall encourage and enable disputing parties to mediate as prescribed by law.”.

**22. Point 23 is amended as follows:** a) Point 23.5 is amended as follows: "23.5 Requirements for the form

The applicant shall submit 02 copies of the form, made using the Form 01-SC provided in Appendix A of this Circular. In the “International patent classification” section included in the form, the applicant shall specify the classification index of technical solutions to be protected according to the latest International Patent Classification (under the Strasbourg Agreement) published by the NOIP in the Industrial Property Official Gazette (complete classification, including section, class, subclass, group (main group or subgroup)). If the applicant fails to classify or classifies in an incorrect manner, the NOIP shall classify and the applicant shall pay fees for classification as prescribed.”.

b) Point 23.6 is amended as follows:

“23.6 Requirements for invention description

The applicant shall submit 02 copies of the invention description. An invention description must consist of the section of invention description and the invention protection scope. The invention description may include a drawing (if necessary) for invention illustration.

a) The description section must completely disclose the nature of the technical solution to be protected. It must contain sufficient information according to which any person of average skill in the corresponding art can deduce the solution. It must clarify the novelty, inventive steps and industrial applicability of the technical solution (if the protection certificate applied for is an invention patent); clarify the novelty and industrial applicability of the technical solution (if the protection certificate applied for is a utility solution patent).

The person of average skill in the corresponding art is a person who has ordinary technical practice skills and is acquainted with publicly available general knowledge in the art.

b) The description section must contain the contents presented in the following order:

(i) Title of the invention: brief expression of the object or objects to be registered (hereinafter referred to as “the object”). The title of the invention must be short and accurate and must not be of a promoting or advertising nature;

(ii) Field of the invention: The field in which the object is utilized or to which the object is relevant. If the invention is utilized or corresponding to multiple fields, such fields must be stated. The abovementioned fields must be conformable to the invention classification results;

(iii) Technical state of the invention: The technical level in the field of invention at the time of filing (known similar objects, (if any)). The case where information about the technical state of the invention is not available must be specified;

(iv) Purposes of the invention: purposes to be achieved or tasks to be completed (problems to be solved) with the invention (for example, to overcome the drawbacks and limitations of the technical solution specified in the section presenting technical state of the invention). The purposes of invention must be presented in an objective and specific manner and must not be of a promoting or advertising nature;

(v) Technical nature of the invention: The nature of the object to be protected, including:

- Technical problems to be solved (purposes of the invention);

- Technical signs (characteristics) featuring the object to be protected, which mean the technical signs (characteristics) forming a solution to achieve purposes of the invention (called substantial technical sign); technical signs (characteristics) considered novel compared to those of known similar technical solutions;

- Benefits (effects) expected to be achieved and compared with technical state (if any). This content may be presented in a separate section as prescribed in Point 23.6.b (ix) below:

(vi) Brief description of accompanied drawings (if any);

(viii) Detailed description of invention realization variations: provide a detailed description of one or several invention realization variations for any person of average skill in the corresponding art to realize the invention;

(viii) Examples of invention realization (if any): one or several specific invention realization variations. If the invention is characterized by quantitative signs, specific value of the sign must be indicated, if it is not quantifiable, the state of the sign must be indicated. In addition, results related to functions and purposes allowed to be achieved by the corresponding object;



(ix) Benefits (effects) expected to be achieved (if any and if not available, specify in the section presenting technical nature of the invention): improvement of productivity, quality, accuracy or effectiveness; energy and raw material saving; simplification or facilitation upon treatment, operation, management or use; response to environmental pollution, etc. If benefits (effects) that may be achieved refer to statistical results obtained from experiments, the applicant shall facilitate and devise methods for performing such necessary experiments.

c) The invention protection scope (hereinafter referred to as the “protection scope” or “protection claim”)

The protection scope (claim) shall be used to determine the scope of industrial property rights to inventions. The protection scope (claim) must be presented briefly and clearly in conformity with the description and drawings, specifying the signs of novelty of the object to be protected (hereinafter referred to as “the object”), and comply with the following regulations:

(i) The protection scope (claim) must be adequately demonstrated by the description, including necessary and sufficient substantial technical signs to identify the object, achieve the set purposes and distinguish the object from a known object;

(ii) Technical signs within the protection scope (claim) must be clear, accurate and recognizable in the corresponding art; the terms used within the protection scope (claim) must be clear and consistent with the terms used in the description section;

(iii) The protection scope (claim) should not invoke the description and drawings, except for invocation to parts that cannot be accurately described with words, such as nucleotide sequences and amino acid sequences, diffraction charts and workflow diagrams;

(iv) If the application contains drawings illustrating the protection claim, signs shown in the protection scope (claim) may be accompanied with indication numbers put in brackets. Those indication numbers shall not be considered restricting the protection scope (claim).

(v) The protection scope (claim) should (is not required to) be expressed in two sections: “Restriction” and “Distinction”. The section “Restriction” covers the title of the object and signs of the object that are identical to those of the latest known object and is connected to the section “Distinction” with the phrase “khác biệt ở chỗ” (“distinguishable by”) or “Đặc trưng ở chỗ” (“characterized by”) or relevant phrases. The section “Distinction” covers signs that distinguish the object from the latest known object and are combined with signs of the section “Restriction” to constitute the object to be protected;

(vi) The protection scope (claim) may include one or multiple points. A multi-point protection scope (claim) may be used to present an object to be protected, with the first point (called independent point) and subsequent point(s) used to embody the independent point (called dependent point(s)); or to present a group of objects to be protected, with several independent points, each presenting an object to be protected in the group. Such independent point may have dependent point(s). Each point to be protected shall only mention one object to be protected and shall be presented in only one sentence;

(vii) Points of the protection scope (claim) must be numbered with Arabic numerals, followed by a dot;

(viii) A multi-point protection scope (claim) used to present a group of objects must satisfy the following requirements: Independent points presenting different objects must not invoke other

points of the protection scope (claim), unless the invocation helps avoid repetition of entire content of another point; dependent points must immediately follow the independent point on which they are dependent.”.

c) Point 23.7 is amended as follows:

“23.7 Requirements for invention abstracts

The applicant shall submit 02 copies of the invention abstract. An invention abstract is used to concisely describe (no more than 150 words) the nature of the invention to be protected. The abstract must disclose principal details of the nature of the technical solution for the purpose of providing information. The abstract may contain typical drawings or formulas. All typical drawings or formulas (if any) shall only be presented in half A4 page and clear.

d) Point 23.8.a is amended as follows:

“a) In addition to the general requirements for an invention description specified in Point 23.6 of this Circular, for an application for registration of an invention concerning genetic sequences or part of genetic sequences, the description section must contain a list of genetic sequences presented according to standard WIPO ST.25 section 2 (ii) (the standard of presentation of a list of nucleotide sequences and amino acid sequences contained in an invention registration application). The list of sequences shall be presented in a separate section and located at the end of the description.”.

dd) Point 23.9.d is amended as follows:

“d) The deposit of samples of biological materials and certification documents for international patent applications shall be compliant with the Regulations under the Patent Cooperation Treaty (PCT).”.

### **23. Point 25 is amended as follows:**

a) Point 25.1.a (ii) and (iii) is amended as follows:

“(ii) The time limit for submitting a request for substantive examination of the application for invention registration:

- For the application for grant of the invention patent: 42 months from the date of submission or from the date of priority in case the application enjoys priority;

- For the application for grant of the utility solution patent: 36 months from the date of submission or from the date of priority in case the application enjoys priority;

In case of a force majeure event or objective obstacles, the time limit for submission of the abovementioned request for substantive examination may be extended as prescribed in Point 9.4 of this Circular but must not exceed 06 months;

(iii) The person requesting substantive examination shall pay fees for search and substantive examination as prescribed. If the written request for substantive examination is submitted later than the set time limit specified in Point 25.1.a (ii) of this Circular, the requester shall pay an extra charge for extension as prescribed. If the abovementioned fees and charges are not fully paid, the request for substantive examination shall be considered invalid and the NOIP will not conduct the substantive examination.”.

b) Point 25.3.a is amended as follows:

“25.3 Assessment of compatibility of the object stated in the application and the type of utility solution/invention protection certificates

a) The object stated in an invention registration application shall be considered incompatible with the type of utility solution/invention protection certificates applied for by the applicant (invention patent/utility solution patent) if it is not a technical solution, particularly not a product or a process. The method of identifying technical solutions is specified in Point 25.3.b below.”

c) Point 25.3.b (i) is amended as follows:

“b) A technical solution - an object protected as an invention - is a collection of necessary and sufficient information on technical methods and/or technical devices (application of natural law) to accomplish a given task (solve a given problem).

A technical solution may take one of the following forms:

i) A product in the form of a tangible object such as tool, machine, equipment, part and electric circuit which is presented by a collection of information used for identifying a man-made product, characterized by technical signs (features) of its configuration, and functions (is utilized) as a device to meet human’s certain human needs; or a product in the form of a substance (including mono-compounds, compounds and mixtures of substances) such as material, component, food and pharmaceutical which is presented by a collection of information used for identifying a manmade product, characterized by technical signs (features) of its presence, ratios and state of its elements, and functions (is utilized) as a device to meet human’s certain needs; or a product in the form of a biological material such as gene, genetically and modified plant/animal which is presented by a collection of information on a product containing genetic information modified by human manipulations and capable of self-regeneration;

d) Point 25.4.a (ii) is amended as follows:

“(ii) The creation, production, utilization or realization of the abovementioned solution shall be repeated with the same result identical to the result stated in the invention description.”

dd) Point 25.4.b (iv) is amended as follows:

“(iv) Instructions on the object can only be carried out in a limited number of times (unrepeatable);”

e) Point 25.5.a (ii) is amended as follows:

“(ii) The invention registration applications or invention protection certificates published by other organizations or countries within 25 years before the date of filing or the date of priority of the application currently under examination (if that application enjoys priority) stored in the patent database of the NOIP and other information sources defined by the NOIP, with the scope of search specified in Point 25.5.a (i) above.

When necessary and possible, the search may be carried out at the national database on science and technology.”

g) Point 25.5.d (i) is amended as follows:

“(i) Substantial signs of the technical solution may be its characteristics in terms of physical structure (parts, assembly, interconnection, etc.) or structure of the substance (composition

(presence, ratios), state of elements, etc.) which constitute, together with other substantial signs, a necessary and sufficient combination to determine the nature (content) of the object;

The abovementioned substantial signs may be presented in the form of technical function of an element in the structure or structure of the product (called functional sign), provided that such presentation is sufficient for the expert of average skill in the field can easily understand the technical devices or technical methods to perform such function under normal condition without creativity. Function or utility of an object to be protected is not a substantial technical sign. It may be purpose or result achieved by that subject;”.

h) Point 25.5.dd is added as follows:

“dd) The invention already published with the exceptional cases specified in Clause 3, Article 60 of the Law on Intellectual Property shall not be deemed to have lost its novelty if the applicant submits the documents relating to the publication to prove the eligibility for exceptions. The abovementioned documents must be submitted together with the application or supplemented in accordance with the regulation on amendment to applications.

i) Point 25.7.d is amended as follows:

“d) Among the applications mentioned in Point 25.7.b above, if there are multiple applications having the same date of submission or earliest date of priority, the invention patent or solution utility patent may only be granted to only one application among those applications as agreed upon by all applicants. In case of failure to reach an agreement, all applications shall be rejected.”.

#### **24. Point 26 is amended as follows:**

“26. Decision on grant, registration and publication of the decision on grant of invention patents, utility solution patents

The issuance of decisions on grant, registration or publication of invention patents or utility solution patents shall be compliant with the general procedures specified in Points 18 and 19 of this Circular.”.

#### **25. Point 27 is amended as follows:**

a) Point 27.1.e is amended as follows:

“e) Identify objects to be protected: If an object to be protected of an application is classified as national secrets, next tasks shall not be performed and paid fees shall be refunded to applicants, except for the fees for preliminary formal examination of the application;”.

b) Point 27.2 is amended as follows:

“27.2. Languages

The international applications originating in Vietnam and submitted to the NOIP must be made in English. Each application shall be made in 03 copies.

For the application with insufficient copies, the NOIP shall make additional copies and the applicant shall pay the copying fee.

c) Point 27.3 is amended as follows:

“27.3 International Searching Authorities and International Preliminary Examining Authorities

For the international applications originating in Vietnam, competent International Searching Authorities and International Preliminary Examining Authorities are national or international patent offices, industrial property or intellectual property offices recognized by the International Bureau such as the office of Australia, Austria, the Russian Federation, Sweden, the Republic of Korea and the European Patent Office.”

d) Point 27.4 is amended as follows:

“27.4 International applications designating Vietnam

If an international application designates Vietnam, the NOIP is the designated office. In this case, in order to enter the national phase, within 31 months from the date of priority (if the application contains the priority claim), the applicant shall submit the following documents to the NOIP:

- a) 02 copies of the invention registration form, made using the Form 01-SC provided in Appendix A of this Circular;
- b) A copy of the international application (if the applicant requests the entry into the national phase before the date of publication of the international publication);
- c) 01 Vietnamese translation of the description and abstract included in the international application (including the published copy or initially filed original of the application if the application has yet to be published, and adjusted copy and explanation of adjusted contents if the international application has been adjusted as prescribed in Article 19 of the Treaty);
- (d) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account);
- dd) A power of attorney (in case the application is filed through a representative). The applicant may submit the power of attorney within the time limit specified in Point 27.7.a of this Circular and the time limit for supplementing the power of attorney shall not be added to the time limit for application examination.”.

dd) Point 27.5 is amended as follows:

“27.5 International applications electing Vietnam

If an international application elects Vietnam, the NOIP is the elected office. The election of Vietnam must be made within 22 months from the date of priority or 03 months from the date on which the international search report is submitted to the applicant or the publication is conducted according to Article 17.2 (a) of the Treaty or written opinion is given according to the Rule 43bis of the Regulations under the Treaty, whichever time limit expires later. In order to enter the national phase, within 31 months from the priority claim), the applicant shall submit the following documents to the NOIP:

- a) 02 invention registration forms, made using the Form 01-SC provided in Appendix A of this Circular;
- b) Vietnamese translation of the description and abstract included in the international application (including the published copy or initially submitted original of the application if the application has yet to be published, and adjusted copy and explanation of adjusted contents if the international application has been adjusted as prescribed in Article 19 and/or Article 34.2 (b) of the Treaty);

c) Vietnamese translations of the annexes to the international preliminary examination report (when substantive examination is requested);

d) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account);

dd) A power of attorney (in case the application is filed through a representative). The applicant may submit the power of attorney within the time limit specified in Point 27.7.a of this Circular and the time limit for supplementing the power of attorney shall not be added to the time limit for application examination.”.

e) Point 27.6 (i) is amended as follows: “27.6 Priority claim

In order to enjoy the priority, the applicant shall reaffirm it in the form, pay fees for examination of the priority claim and submit, at the request of the NOIP’s, Vietnamese translations of documents already submitted to the International Bureau and necessary documents according to the Rule 17.1 (a) of the Regulations under the Treaty.

For PCT applications, the priority claim shall be handled in conformity with the Treaty and the Regulations under the Treaty.”.

**26. Point 30.3 is amended as follows:**

“30.3 Rejection of applications

If an applicant, after receiving the NOIP’s notice of the results of formal examination, which points to errors and states the NOIP’s rejection of the application according to Point 13.6.a of this Circular, fails to correct errors or unsatisfactorily corrects errors or expresses no dissenting opinion or an unreasonable dissenting opinion within a set time limit, the NOIP shall send that applicant a notice of rejection of the application for layout design registration.”.

**27. Point 32.1 is amended as follows:**

“32. Decision on grant, registration and publication of decision on grant of certificates of layout design registration

32.1. Notice of grant of the application for layout design registration

If no dissenting opinion is made by a third party to the registration of a layout design within 03 months after the layout design is published in the Industrial Property Official Gazette or though a dissenting opinion is expressed, it is later proved unreasonable, the NOIP shall issue a notice of granted application to the object stated in the application and set a time limit of 03 months from the issuance date of the notice in order for the applicant to pay fees for publication and registration and charges for grant of a protection certificate.”.

**28. Point 33 is amended as follows:**

a) Point 33.2 is amended as follows:

“33.2 The application for industrial design registration must ensure uniformity according to Clauses 1 and 3, Article 101 of the Law on Intellectual Property and regulations specified in this Point.

a) An application for industrial design registration is considered uniform if:

(i) it requests protection of an industrial design of a product; or

(ii) it requests protection of industrial designs of multiple products in a set of products, of which each product has a corresponding industrial design; or

(iii) it requests protection of an industrial design of a product accompanied with one or several variations of that industrial design. The first variation must be a basic variation.

The variations of an industrial design must not differ significantly from the basic plan and from each other.

b) A product means an item, tool, equipment, vehicle, or parts used for assembling or incorporating such products, is manufactured using industrial or craft method, has clear structure and functions and is sold independently.”.

b) Point 33.3 is amended as follows:

“33.3 Requests for information provision

a) In the cases where there are grounds (information, evidences) for the suspicion about the truthfulness of the information in the application for industrial design registration, the NOIP may request the applicant to, within 02 months, submit documents certifying such information, especially documents certifying the lawful right of registration in case the applicant enjoys the right to submit from another person (certificate of inheritance right, certificate or written agreement on assignment of the right to submit; contract for job assignment or employment contract, etc.).

b) The NOIP may also request the applicant to submit, within 02 months, documents certifying the lawful ownership or the lawful right to use trade indications (trademarks, GIs or trade names), protected industrial designs of other persons, if there are grounds for the suspicion that the industrial design stated in the application contains those objects;

c) If the applicant does not request provision of information or provision of information that fails to satisfy the requirements specified in Points 33.3.a and 33.3.b above, the application shall be considered invalid or the application for a protection certificate shall be rejected.”.

c) Point 33.5 is amended as follows:

“33.5 Requirements for industrial design descriptions

The applicant shall submit 01 industrial design description, including the following contents:

a) Name of the industrial design, which is the name of the product imbued with the industrial design, expressed in common words and phrases, not of the advertising nature, does not contain symbols, annotations and trade indications;

b) Field in which the industrial design is used, which is a specific field in which the product imbued with the industrial design is used, clearly stating the purposes, utility and functions of the product;

c) The most similar industrial design: clearly state an industrial design which is least different from the industrial design of the same product stated in the application and widely known before the date of submission or the date of priority (if the application contains a priority claim), indicating the information source disclosing the most similar industrial design;

d) List of photos or drawings, which enumerates photos, three-dimensional drawings, shadows, cross-sections, etc., of the industrial design one after another according to the ordinal numbers of those photos or drawings;

dd) The industrial design description section shall be compliant with Clause 2, Article 103 of the Law on Intellectual Property and include the following contents:

(i) It fully discloses the nature of the industrial design to be protected, adequately showing design features presenting the nature of the industrial design as well as new design features that are distinguishable from the most similar industrial design defined in Point 33.5.c above and consistent with those shown in the set of photos or drawings;

(ii) Design features of the industrial design to be protected must be presented one after another in the following order: Configuration and line features, correlation between configuration and/or line features, color features (if any);

(iii) For a product that have different usages (for example: a product that has a cover or is foldable, etc.), its industrial design must be described in different states;

(iv) If an industrial design consists of multiple variations, the basic variation must be clearly indicated and other variations must be numbered. Distinguishable design features of each variation in comparison with those of the basic variation must be clearly indicated;

(v) If an industrial design is the design of a set of products, the design of each product in the set must be described.

e) Scope of protection (or claim for protection) of the industrial design must fully enumerate necessary and sufficient design features to identify the nature of the industrial design to be protected and the scope of industrial property rights to the industrial design, shown on photos or drawings stated in the application, and including new and distinctive design features in comparison with the known similar industrial designs.”.

d) Point 33.6 is amended as follows:

“33.6 Requirements for sets of photos or drawings of industrial designs

The applicant shall submit 04 sets of photos or 04 sets of drawings of an industrial design, presenting the object to be protected in a uniform and accurate manner and printed or attached to A4 paper without border. The sets of photos or drawings must fully present design features of the industrial design to be protected according to which any person with average knowledge in the corresponding art can identify that industrial design, and follow the following instructions:

a) Photos or drawings must be clear and well defined; drawings must be presented with unbroken lines; the background of a photo or drawing must be monochrome and contrast with the industrial design; a photo or drawing must show only the product imbued with the industrial design to be protected (not accompanied with another product), except for the case specified in Points 33.6.g and 33.6.h below, must not contain indications of the technical drawing or indications providing explanation for industrial design, except for the indications that are short and necessary for showing the cross-section, magnified pictures, closed and open state;

b) Photos or drawings must show the industrial design on the same scale. The size of the industrial design shown in photos or drawings must neither be smaller than 90 mm x 120 mm nor larger than 190 mm x 277 mm;



c) Photos and drawings must show the industrial design viewed in the same direction and numbered in the following order: three-dimensional picture of the industrial design, front, rear, right-side, left- side, top-down and down-top shadows of the industrial design; shown shadows must be frontispieces.

d) Photos or shadows that are similar or symmetrical to the existing photos or shadows, photos of the bottom side of the products of large size and weight, photos or shadows of too thin surfaces of the industrial design are not required to be included in the application, provided that such ones are specified in the list of photos and drawings in the description;

dd) For the industrial design of an expandable product (for instance: box, package, etc.), shadows of the industrial design may be replaced with photos or drawings of the industrial design in an expanded state;

e) Depending on the complexity of an industrial design, more photos or three-dimensional drawings from other angles, cross-sections or magnified pictures of parts, pictures of knocked down components of the product, photos or drawings illustrating the position for fitting or use of such part on the complete product may be required to clearly show the nature and design features of the industrial design (may not be used to establish the industrial property right to the industrial design of such part)

g) For the industrial design of the product assembled or assembled from various parts, photos or drawings of these parts may be provided but provided for illustrative purposes and not for the purposes of establishing industrial property rights to the industrial design of such parts;

h) Photos or drawings must show the industrial design in the same selected usages; photos or drawings showing other usages that may be provided to clarify the nature of the industrial design;

i) For the application including multiple variations, the basic variation must be shown first. For each variation of the industrial design, there must be a set of photos or drawings fully presenting it as prescribed in this Point;

k) For a set of products, there must be three-dimensional pictures of the whole set and a set of photos or drawings of each product in the set prescribed in Point.

dd) Point 33.7 is amended as follows:

“33.7 Design features of industrial designs

a) Design features of an industrial design are elements presented in the form of lines, configurations, colors, position or size correlation, which constitute, in combination with other features (signs), a gathering necessary and sufficient for the formation of that industrial design.

b) Substantial design features are design features that are noticeable/memorable, necessary and sufficient to identify an industrial design and distinguish it from another one used for the same type of product.

The same type of product is the product that has usages or functions identical or similar to each other. A complete product and parts used for assembling or incorporating a complete product are different types of product.

c) “The following elements shall not be treated as basic design features of an industrial design:

- (i) Configurations and lines dictated by the technical functions of the product (for example: the flat shape of data-recording disks is dictated by the relative motion between disks and reading heads, etc.);
- (ii) Elements whose presence in the combination of signs gives no aesthetic impression (impression of the shape of the product remains unchanged with or without those elements; for example: if a change in a familiar configuration or line is not impressive enough to be noticed, therefore, the changed configuration or line will be taken as old one);
- (iii) Materials used for manufacture of the product;
- (iv) Signs affixed or stuck on the product merely for the purpose of providing information or guidance on origin, features, composition, utility and usage of the product, for example: information on a label (such as manufacturer, trade indication, origin, bar code, etc.), trademark, GI, etc.;
- (v) Size of the product, except for change of size of patterns of a fabric sample or similar materials;
- (vi) Other elements failing to satisfy the requirements specified in Point 33.7.b of this Circular.”.

**29. Point 35 is amended as follows:**

a) Point 35.1 is amended as follows:

“35.1 Assessment of similarity of industrial designs:

- a) Two industrial designs are considered identical when they are used for the same type of product and have the same gathering of substantial and insubstantial design features;
- b) Two industrial designs are considered not significantly distinguishable when they are used for the same type of product and have the same gathering of substantial design features;
- c) Two industrial designs are considered similar when they are used for the same type of product and have at least one substantial design feature identical to or not significantly distinguishable from each other;
- d) Two industrial designs among the similar industrial designs are considered the most similar when the number of their substantial design features that are identical to or not significantly distinguishable from each other is larger than that of all other similar industrial designs;
- dd) Two industrial designs are considered not significantly distinguishable from each other when they are used for the same type of product or used for the same type of product but have at least one distinguishable similar design feature.”.

b) Point 35.3 is amended as follows:

“35.3 Assessment of compatibility of objects stated in applications with the type of industrial design protection certificate

An object stated in an application shall be considered incompatible with the type of industrial design protection certificate if:

- a) The object is not the appearance of a product. The appearance is design features (configuration, lines, colors or combination of these elements) that are visible during the use of

the product (application of a product's utility by ordinary methods and by any consumer, including its maintenance or repair);

b) The object stated in the application is:

(i) A product's appearance dictated by its technical characteristics;

(ii) A civil or industrial construction's appearance, except for the appearance of the modules or separate sections that may be used independently or assembled to create a construction such as shops, kiosks, mobile homes or similar products.”.

c) Point 35.7 is amended as follows:

“35.7 Assessment of novelty of industrial designs according to Article 65 of the Law on Intellectual Property.

a) Method of assessment of novelty of industrial designs

To assess the novelty of an industrial design stated in an application, it is required to compare the gathering of substantial design features of that industrial design with that of an industrial design of each control industrial design found through the information search.

b) Conclusion on novelty of industrial designs

An industrial design stated in an application shall be considered novel if:

(i) no control industrial design is found in the mandatory minimum information source; or

(ii) though a control industrial design is found in the mandatory minimum information source, the industrial design stated in the application is considered significantly distinguishable from the control industrial designs; or

(iii) the control industrial design is the industrial design stated in the application published/disclosed in the cases specified in Clauses 3 and 4, Article 65 of the Law on Intellectual Property.”.

d) Point 35.8.a is amended as follows:

“a) Method of assessment of creativity of industrial designs

To assess the creativity of an industrial design stated in an application, it is required to compare the gathering of substantial design features of that industrial design with that of each control industrial design found through the information search.”.

dd) Point 35.9 is amended as follows:

“35.9 Inspection of the first-to-file rule applied to the industrial design

For the applications for industrial design registration that satisfy the protection conditions, before issuing the notice of granted application as prescribed in Point 15.7.a (iii) of this Circular, the NOIP shall inspect the conformity to the first-to-file rule prescribed in Clause 1 and Clause 3, Article 90 of the Law on Intellectual Property, in accordance with the following regulations:

a) To inspect the first-to-file rule, it is required to search information from the mandatory sources specified in Point 35.4.b (iv) of this Circular.

b) The purpose of the information search is to find applications for registration of industrial designs of the same type of product identical or not significantly distinguishable from each other

or to find the applications for registration of industrial designs of the product containing a part that has the industrial design identical to or not significantly distinguishable from the registered industrial design and identify the application with the earliest filing date or date of priority.

c) If there are many applications mentioned in Point 35.9.b above, the industrial design patent shall only be granted to the valid application with the earliest filing date or date of priority among the applications satisfying the conditions for grant of a protection certificate.

d) Among the applications for registration of the same type of product that are mentioned in Point 35.9.b above, if there are multiple applications having the same filing date or earliest date of priority, the industrial design patent may only be granted to only one application among those applications as agreed upon by all applicants. In case of failure to reach an agreement, all applications shall be rejected.”

**30. Point 36 is amended as follows:**

“36. Decision on grant, registration and publication of decision on grant of industrial design patents

The issuance of decisions on grant, registration or publication of decision on grant of industrial design patents shall be compliant with the general procedures specified in Points 18 and 19 of this Circular.”

**31. Point 37 is amended as follows:**

a) The first passage of Point 37.3 is amended as follows:

“37.3 If there are grounds (information or evidences) for the suspicion about the truthfulness of information provided in an application, the NOIP may request the applicant, within one month, to submit documents in order to certify such information. The following documents may be submitted:”

b) Point 37.3.g is added as follows:

“g) Other appropriate documents to clarify truthfulness of the information provided in the application.”

c) Point 37.4.b (iii) is amended as follows:

“(iii) If the applicant fails to specify a substantial trademark or a substantial goods or service, then all trademarks and all goods or services related to the trademark stated in his/her application shall be considered independent from one another. The distinctiveness of the trademark stated in the application must be assessed in accordance with general regulations on distinctiveness assessment that are specified in Point 39 of this Circular.”

d) Point 37.4.c is amended as follows:

“c) For a certification trademark, the applicant shall provide a brief description of the nature of the goods or services, which is certified by the trademark in the form (including origin, raw materials, methods of producing goods and providing services, quality, accuracy, safety or other nature of the goods or services bearing a trademark).”

dd) Point 37.5a is added as follows:

“37.5a The organizations that have the right to register a collective trademark as prescribed in Clause 3, Article 87 of the Law on Intellectual Property

a) Lawfully established collective organization prescribed in Clause 3, Article 87 of the Law on Intellectual Property is an organization with 02 or more members and is established in accordance with regulations of law. The members of such organization have their own business activities, goods and services;

b) The following organizations shall be treated as collective organizations according to Point a above:

(i) Cooperative Alliance; cooperatives in accordance with regulations of the Law on Cooperatives, if the Charter clearly specifies that members are engaged in independent production and business activities;

(ii) Groups of enterprises in accordance with regulations of the Law on Enterprises;

(iii) Associations in accordance with regulations of the Law on Associations, if the Charter clearly specifies that members of associations are engaged in independent production and business activities;

(iv) Other organizations satisfying the requirements specified in Point 37.5a.a of this Circular.”.

e) Point 37.5b is added as follows:

“37.5b The organizations that have the right to register certification trademarks as prescribed in Clause 4, Article 87 of the Law on Intellectual Property

a) Organizations licensed to control and certify properties (quality, origin, etc.) of the goods or services bearing the trademark is the organization that does so itself or assigns, hires or authorizes another organization to do so as prescribed by law or the control or certification is specified in the business certificate, charter, establishment decision or task assignment decision of such organization;

b) In the cases where the control and certification by the organizations registering certification trademarks is suspected, the NOIP may request such organizations to provide documentary evidences.”.

g) Point 37.6.h is added as follows:

“h) List of members using collective trademarks.”.

h) Point 37.7.a is amended as follows:

“a) The written permission for use of geographical name or other geographical indications of local specialties for registration of collective or certification trademarks containing such trademark is granted by the following competent authorities:

(i) The People's Committees of provinces and central-affiliated cities where the geographical area is subject to the geographical name or other geographical indications of local specialties (in case the geographical area belongs to a local authority);

(ii) All People's Committees of provinces and central-affiliated cities where the geographical area is subject to the geographical name or other geographical indications of local specialties (in case the geographical area belongs to multiple local authorities).”.

**32. Point 39.12.a (i) is amended as follows:**

“(i) It is identical or similar to the name or emblem of a nation or territory (national flag, national emblem, name of the nation or an area) or confusingly similar to the name or emblem of a nation or territory, making a mistake that goods or services bearing the indication originate from that nation or territory but actually originates from other nations or territories;

**33. Point 40 is amended as follows:**

“40. Decision on grant, registration and publication of the decision on grant of trademark registration certificates

The issuance of decisions on grant, registration or publication of the decision on grant of trademark registration certificates shall be compliant with the general procedures specified in Points 18 and 19 of this Circular.”.

**34. Point 41 is amended as follows:**

a) Point 41.6 is amended as follows:

“41.6 Processing of the application for trademark international registration designating Vietnam

a) After receiving the International Bureau’s notice of the application for trademark international registration designating Vietnam, the NOIP shall conduct the substantive examination according to the procedures applied to the trademark registration application filed according to the national formality. Within 12 months from the date on which the International Bureau issues the notice, the NOIP shall reach a conclusion on protectability of the trademark;

b) For a trademark satisfying the conditions for protection under Vietnamese law, the NOIP shall carry out the following procedures:

(i) Before the expiration of the 12-month time limit specified in Point a above, the NOIP shall issue a decision on protection of internationally registered trademark, recognized in the National Register of trademarks (internationally registered trademark section) and submit the declaration of protection of internationally registered trademark in Vietnam to the International Bureau according to the Model Form 4 of the International Bureau; and

(ii) The NOIP shall publish the decision in the Industrial Property Official Gazette within 02 months from the issuance date of decision.

The *protection scope (volume)* shall be certified according to the content of the request for trademark international registration recognized by the World Intellectual Property Organization (WIPO) and certified by the NOIP.

c) For the trademark that includes all or some of goods and services failing to satisfy protection conditions or the trademark that satisfies protection conditions but the international registration application contains errors (for example, lack of regulation on use of collective or certification trademarks, lack of photos or drawings showing the three-dimensional perspective of the trademark, etc.), before the expiration of the 12-month time limit specified in Point 41.6.a above, the NOIP shall issue a notice of its temporary rejection, made using the Model Form 3 of the International Bureau and specifying contents and reasons thereof to the International Bureau;

d) Within 03 months from the date on which the NOIP issues a notice of its temporary rejection to all or some of goods and services, the applicant may correct errors or express his/her dissenting opinion.

Errors or dissenting opinion on the temporary rejection shall be corrected or expressed according to the procedures applied to the trademark registration application filed according to national formality and regulation on filing methods.

dd) If the NOIP intends to reject all or some of the list of goods and services (specified in the notice of temporary rejection), if the applicant, within the 03-month time limit specified in Point d above, satisfactorily corrects errors and/or provides reasonable justifications for the intended rejection of all or some of such goods or services, the NOIP shall carry out the following procedures:

(i) Issue a decision on protection of internationally registered trademark with the protection scope (volume) corresponding to the goods or services satisfying protection conditions; record it in the National Register of trademarks (internationally registered trademark section) and submit the declaration of protection acceptance after the issuance of temporary rejection, made using the Model Form 5 of the International Bureau;

(ii) The NOIP shall publish the decision in the Industrial Property Official Gazette within 02 months from the issuance date of decision.

e) In the cases where the NOIP intends to reject some of the list of goods and services (specified in the notice of temporary rejection), if the applicant, within the 03-month time limit specified in Point d above, fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion on such temporary rejection, the NOIP shall apply the procedures specified in Point 41.6.dd above to only the goods or services satisfying protection conditions (goods or services are not specified in the notice of temporary rejection).

g) In the cases where the NOIP intends to reject all of the list of goods and services (specified in the notice of temporary rejection), if the applicant, within the 03-month time limit specified in Point d above, fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion on such temporary rejection, the NOIP shall issue a decision on rejection of the application for protection of internationally registered trademarks and submit a notice of rejection, made using the Model Form 6 of the International Bureau to the International Bureau;

h) The procedures for complaint and settlement of a complaint about the decisions specified in Points 41.6.dd, e and g above are the same as those for the trademark registration application filed according to the national formality in accordance with regulations specified in Point 22 of this Circular if there are grounds for the belief that this decision is issued against the law on content and procedures for issuance. The NOIP shall report the results of complaint settlement to International Bureau and applicant;

i) From the date on which the international registration of the recognized trademark becomes valid in Vietnam, the NOIP shall, at the request of the trademark proprietor, grant a certificate of protection in Vietnam of internationally registered trademark, provided that the requester pays the prescribed fee.”.

b) Point 41.8 is amended as follows:

“41.8 Trademark registration applications transformed due to invalidation of trademark international registrations

a) If the trademark international registration in Vietnam of a trademark proprietor who is a national of a nation contracting only to the Madrid Protocol is invalidated according to Article 9quinquies of the Madrid Protocol, such person may submit an application for the registration of transformed trademark to the NOIP to register protection of such trademark in respect of all or some of the goods and services listed in the invalidated trademark international registration.

The applicant shall pay fees and charges in accordance with the procedures applied to the application for trademark registration filed according to national formality. For the international registration application transformed from international registration already protected in Vietnam, the applicant shall not pay fees for application publication.

b) A transformed application for trademark registration shall be considered valid if it satisfies the following conditions:

(i) It is filed within 03 months from the date of invalidation of the corresponding international registration;

(ii) The goods and services listed in the transformed registration application are in fact covered by the list of goods and services contained in the corresponding international registration;

(iii) The application is made using the Form 07-DKCD provided in the Appendix C of this Circular (in which the list of goods and services compiled in Vietnamese must be in line with the list of goods and services contained in the corresponding international registration);

(iv) The application satisfies other requirements for formality of the application for trademark registration in accordance with regulations of Vietnamese law;

(v) The applicant shall fully pay prescribed fees and charges.

c) The transformed application for trademark registration shall have the date of filing the international application for trademark registration or date of priority of the corresponding international application for trademark registration recognized (if the application enjoys priority under the international treaty) unless there are grounds for refusal.

d) The NOIP shall carry out formal examination of the transformed application for trademark registration in accordance with the transformation conditions specified in Point 41.8.b above.

c) For the formalities allowed to be included in the corresponding international application by the International Bureau, the NOIP shall not carry out a re-examination unless the application contains errors (for example, lack of regulation on use of collective or certification trademarks, lack of photos or drawings showing the three-dimensional perspective of the trademark, etc.). The NOIP shall issue a notice of rejected application if the application fails to satisfy the conditions specified in Point 41.8.b above.

dd) For the trademark registration application transformed from international registration already protected in Vietnam, the NOIP shall not carry out the substantive re-examination. In case the application satisfies the transformation condition specified in Point b above, the NOIP shall issue a decision on grant of protection certificates, record it in the National Register of trademarks and publish it in the Industrial Property Official Gazette;

e) For the trademark registration application transformed in a valid manner and not mentioned in Point 41.8.dd above, the NOIP shall carry out the procedures for acceptance of valid applications, publication of applications, substantive examination and the next procedures that



are also applied to the trademark registration application filed according to the national formality.”.

**35. Point 42 is amended as follows:**

a) Point 42.3 is amended as follows:

“42.3. Documentary evidences for the ownership and reputation of a trademark may include information on the scope, scale, level and continuity of the use of the trademark, including an explanation of origin, history and time of continuous use of the trademark; number of nations in which the trademark has been registered or recognized as a well-known trademark; list of goods and services bearing the trademark; the territory in which the trademark is circulated, turnover from products sold or services provided; quantity of goods and services bearing the trademark already manufactured or sold; property value of the trademark, price of transfer or assignment of the use right and value of investment capital contributed in the form of the trademark; investment in and expenses for advertising and marketing of the trademark, including those for participation in national and international exhibitions; infringements, disputes and decisions or rulings of the court or competent authorities; surveyed number of consumers knowing the trademark through sale, use, advertisement and marketing; rating and evaluation of reputation of the trademark by national or international organizations or the mass media; prizes and medals awarded on the trademark; results of examinations held by intellectual property examination organizations.

b) Point 42.4 is amended as follows:

“42.4 In the cases where the recognition of the well-known trademark leads to a decision on actions against infringements of right in respect of well-known trademark specified in Point d, Clause 1, Article 129 of the Law on Intellectual Property, such well-known trademark shall be recognized in the list of well-known trademarks kept at the NOIP for reference in service of the establishment and protection of intellectual property rights.”.

**36. Point 43.4 is amended as follows:**

a) Point 43.4.a (v) is amended as follows:

(v) Information about the self-inspection of given nature/quality of the product.”.

b) Point 43.4.b is amended as follows:

“b) The description of the nature/quality/reputation of the product must be accompanied with document evidences for the fact that the information on the nature/quality/reputation are grounded and true (results of examination, research, survey, etc).

**37. Point 45.3.d is added as follows:**

“d) The criteria for determining geographical names and other geographical indications of the product shall be applied as prescribed in Point 37.8 of this Circular.”.

**38. Point 46 is amended as follows:**

“46. Decision on grant, registration and publication of decision on grant of certificates of GI registration

The issuance of decisions on grant, registration or publication of decision on grant of GI registration certificates shall be compliant with the general procedures specified in Points 18 and 19 of this Circular.”.

**39. Point 47 is amended as follows:**

a) Point 47.1.h is added as follows:

“h) In addition to the above-mentioned documents, an application for registration of a contract for transfer of industrial property rights shall include the following documents:

(i) The transferee's regulations on the use of the collective or certification trademarks according to Article 105 of the Law on Intellectual Property;

(ii) Documentary evidences for the transferee's right to file application in respect to certification or collective trademarks prescribed in Clauses 3 and 4, Article 87 of the Law on Intellectual Property.

In this case, the NOIP shall re-examine the request for right to file applications and regulations on use of trademarks. The applicant must pay fees for application examination in addition to charges and fees for application for registration of contracts for transfer of industrial property rights according to regulations.”.

b) Point 47.2.b is amended as follows:

“b) 02 copies of the contract (an original or a copy enclosed with its original for comparison, except for the copy already certified as prescribed); if the contract is made in a language other than Vietnamese, it must be enclosed with its Vietnamese translation; if the contract consists of many pages, each page must bear the parties’ signatures or every two adjoining pages must be appended with a seal on their inner edges;”.

**40. Point 48 is amended as follows:**

a) Point 48.1 is amended as follows:

“48.1 If an application for registration of a contract for assignment of industrial property rights contains no error defined in Point 48.3 of this Circular, the NOIP shall perform the following tasks:

a) Issue a decision on recognition of transfer of industrial property rights (for the contract for transfer of industrial property rights) and decision on grant of a certificate of registration of the contract for licensing of an industrial property object (for the contract for licensing of an industrial property right);

b) For the contract for transfer of industrial property rights: record in the protection certificate the new owner; in case of partial transfer of the list of goods/services bearing the protected mark, grant a new certificate of trademark registration to the transferee and confine the list of goods/services in the original protection certificate for the transferred part;

c) For the contract for licensing of an industrial property object: grant a certificate of registration of the contract on licensing of an industrial property object to the applicant; append the registration seal to 02 copies of the contract, transfer 01 to the person filing the application and keep 01;

d) Record the assignment of industrial property rights in the national register of assignment of industrial property rights;

dd) Publish the decision on recognition of transfer of industrial property rights and decision on grant of a certificate of registration of the contract for licensing of an industrial property object in

the Industrial Property Official Gazette within 02 months from the day on which the decision is signed.”.

b) Point 48.2 is amended as follows:

“48.2 If the application for registration of the contract for assignment of industrial property rights contains errors defined in Point 48.3 of this Circular, the NOIP shall carry out the following procedures:

a) Issue a notice of rejected application, specifying reasons for errors of the application and set a time limit of 02 months from the date on which the notice is signed in order for the person filing the application to correct errors or express his/her dissenting opinion on the rejection;

b) Issue a decision on rejection if the person filing the application fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion on the rejection within the set time limit.”.

**41. Point 49 is amended as follows:**

a) Point 49.2.b is amended as follows:

“b) The application for extension of a contract must be filed within 01 month before the expiration of the contract term stated in the certificate of registration of the contract for licensing of an industrial property object.”.

b) Point 49.3.b is amended as follows:

“b) If the application contains errors, the NOIP shall issue a notice of its rejection of the application for recognition of adjustment to contents, extension or termination of the contract for licensing of an industrial property object, specifying the reasons for errors of the application and set a time limit of 02 months from the date on which the notice is issued in order for the person filing the application to correct errors or express his/her dissenting opinion on the rejection.

If the person filing the application fails to correct errors or unsatisfactorily corrects errors, expresses no dissenting opinion or an unreasonable dissenting opinion within the set time limit, the NOIP shall issue a decision on rejection of the application for adjustment, extension or termination of the contract for licensing of an industrial property object.”.

**42. Point 55 is amended as follows:**

“55. Regrant of practice certificates

The NOIP shall carry out procedures for the regrant of industrial property representation service practice certificate according to the written request made by the industrial property representative using the Form 02-CLCC provided in the Appendix E of this Circular in case there is any change to the information specified in the his/her practice certificate or the practice certificate is lost or damaged (torn, stained, faded, etc.).

The procedures for regrant of practice certificates are the same as those for grant of practice certificates specified in Point 53.3 of this Circular.”.

**43. Point 56 is amended as follows:**

a) Point 56.1 is amended as follows:

“56.1 The organization or individual eligible for provision and practice of industrial representation services may request the NOIP to record in the national register of industrial property representative specified in Clause 1, Article 156 of the Law on Intellectual Property, and this Point and shall pay fees and charges as prescribed.”.

b) Point 56.2.d is amended as follows:

“d) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).”.

c) Point 56.3.c is amended as follows:

“d) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).”.

**44. Point 57 is amended as follows:**

a) Point 57.1 is amended as follows:

“57.1 The industrial property representation service provider or industrial property representative organization or individual eligible for provision and practice of industrial representation services shall have the right and obligation to request the NOIP to record changes related to the information already included in the national register of industrial property representatives according to this Point and pay fees and charges as prescribed.”.

b) Point 57.2.d is amended as follows:

“d) A copy of the receipt (in case fees and charges are paid by post or directly to the NOIP's account).”.

**45. Point 59 is amended as follows:**

a) The first passage of Point 59 is amended as follows:

“59. Professional exam of the industrial property representatives

The professional exam of the industrial property representatives (hereinafter referred to as “exam”) prescribed in Article 28 of the Decree No.103/2006/ND-CP shall be conducted according to the following specific regulations:”.

b) Point 59.2.b (iii) is amended as follows:

“(iii) Documentary evidences that the candidate has been provided with training in the Law on Industrial Property law or is experienced in this field according to Point d, Clause 2, Article 155 of the Law on Intellectual Property (originals or copies enclosed with their originals for comparison except for the certified copies):- A copy of the certificate of completion of the training courses on industrial property law recognized by the Ministry of Science and Technology; or

- Graduation or postgraduate thesis on industrial property and certificate of the educational institution where the graduation or postgraduate thesis is completed; or

- Copies of the employment decisions, employment contract or other documentary evidences certified by the office where the candidate is working for the candidate's at least 05 consecutive year direct participation in the substantive examination of the application for industrial property registration; or

- Copies of the employment decisions, employment contract or other documentary evidences certified by the office where the candidate is working for the candidate's at least 05 consecutive year direct participation in the industrial property law-related activities, including inspection, examination, procuracy, adjudication, legal affairs, legal consulting; scientific research into (with title of industrial property researcher) or lecture on industrial property;" and

c) Point 59.2.b (vi) is added as follows:

"(vi) The documents prepared in a language other than Vietnamese must be enclosed with Vietnamese translations at the request of the NOIP."

**46. Point 61 is amended as follows:**

"61. Access to and use of information included in the national database of industrial property  
All organizations and individuals may access and use the information included in the national database of industrial property in the two following forms:

a) Search for information themselves in the databases set up by the NOIP at information searching authorities for public access or published on the Internet;

b) Use information searching, document and data provision services through the web service provided by the NOIP, provided that fees for such services are paid as prescribed."

**47. Point 62 is amended as follows:**

"62. Information searching service, document and data provision services

62.1 When requesting the NOIP to search for information and provide industrial property documents, the requester shall make a request form (using the Form 01-YCTCSC, 02-YCTCKD and 03-YCTCNH provided in the Appendix F of this Circular), clearly stating the search purpose and scope (field, type of data carrier, search time, country or region subject to the search, etc), or directory information to determine the documents required and pay a service fee as prescribed.

62.2 Within 01 month since receipt of the request form for information search and document provision, the NOIP shall send a written response to the requester according to the following regulations:

a) For a valid request (with a valid request form defined in Point 62.1 of this Circular and a receipt of the search fees), the NOIP shall send the requester a search report and/or documents upon request.

b) For an invalid request (with an invalid request form, unclear search purpose and scope, no payment of the search fees, etc.), the NOIP shall send a notice of rejection of the request, clearly specifying the reasons thereof.

62.3 A search report contains only information found and indications of origins of such information. If no information from sources requested to be searched is found, the search report must also state that.

The search report must not contain opinions or assessments of found information.

62.4 A search report must clearly state the full name of the person conducting the search and responsible for the search results.

62.5 The data provision services through web shall be provided under the agreement between the NOIP and regulatory authorities and service providers in industrial property and scientific and technological information.”.

**48. Point 63.3 is added as follows:**

“63.3 The NOIP shall aggregate information included in the national database of industrial property to serve the state management of industrial property by provinces and central-affiliated cities on a periodic basis (every 6 months at the minimum).”.

**49. Point 65 is amended as follows:**

“65. Regulation on completion of industrial property procedures

The NOIP shall issue regulations on completion of industrial property procedures in accordance with regulations of the Decree No. 103/2006/ND-CP and this Circular.”.

**Article 2.**

1. The second passage of Point 13.2.g, Point 15.4, Point 15.5, Point 17.3.c, Point 18.2.c, Point 27.4.b, Point 27.5.b, Point 60.2.c and Point 60.2.d is annulled.
2. The phrase “Nghị Định về sở hữu công nghiệp” (“Decree on industrial property”) is replaced with “Nghị Định số 103/2006/ND-CP” (“Decree No. 103/2006/ND-CP”) in Points 2.2, 9.1, 13.5.c, 22.1, 59 and 65.
3. The phrase “thông báo” (“notice”) is replaced with “quyết định” (“decision”) in Points 13.6.b, 14.3, 15.7.b, 15.7.c, 17.1.a, 17.2.b, 17.2.c, 17.3.a, 18.3.d (iii), 20.4.d (ii) and 48.2.b.
4. The phrase “Văn bằng bảo hộ sáng chế” (“Invention protection certificate”) is replaced with “Văn bằng bảo hộ sáng chế/giải pháp hữu ích” (“Invention/Utility solution protection certificates”) in Points 2.1, 20.1.c (i), 20.3 and 25.3.

**Article 3. Implementation clause**

This Circular comes into force from January 15, 2018./.

**PP. MINISTER  
DEPUTY MINISTER**

**Pham Cong Tac**