

No.: 18/2011/TT-BKHCN

Hanoi, July 22, 2011

CIRCULAR

AMENDING AND SUPPLEMENTING SOME PROVISIONS OF THE CIRCULAR NO. 01/2007/TT-BKHCN, OF FEBRUARY 14, 2007, BEING AMENDED AND SUPPLEMENTED BY THE CIRCULAR NO. 13/2010/TT-BKHCN, OF JULY 7, 31, 2010 AND THE CIRCULAR NO. 01/2008/TT-BKHCN, OF FEBRUARY 25, 2008, BEING AMENDED AND SUPPLEMENTED BY THE CIRCULAR NO. 04/2009/TT-BKHCN, OF MARCH 27, 2009

Pursuant to the Government’s Decree No. 28/2008/ND-CP, of March 14, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Science and Technology;

Pursuant to the Law on intellectual property, of November 29, 2005 amended and supplemented by the Law No. 36/2009/QH12, of June 19, 2009 (hereinafter referred to as the Law on intellectual property);

Pursuant to the Government’s Resolution No. 67/NQ-CP, of December 24, 2010, on simplifying administrative procedures within management functional scope of the Ministry of Science and Technology;

The Minister of Science and Technology amends and supplements some provisions of the Circular No. 01/2007/TT-BKHCN, of February 14, 2007 guiding the implementation of The Government’s Decree No. 103/2006/ ND-CP of September 22, 2006, being amended and supplemented by the Circular No. 13/2010/TT-BKHCN (hereinafter referred to as “the Circular No. 01/2007/TT-BKHCN amended in 2010”) and the the Circular No. 01/2008/TT-BKHCN, of February 25, 2008 guiding grant, revocation of industrial property assessor cards and certificates of organizations eligible to operate in industrial property assessment, being amended and supplemented by the Circular No. 04/2009/TT-BKHCN, of March 27, 2009 (hereinafter referred to as "the Circular No. 01/2008/TT-BKHCN amended in 2009") as follows:

Article 1. To amend and supplement some points of the Circular No. 01/2007/TT-BKHCN:

1. To amend and supplement point 7.2.e as follows:

“e. The object(s) stated in the application must be accurately grouped and classified according to regulations. If the applicant cannot self-group, self-classify accurately, the National Office of Intellectual Property shall implement this work and the applicant must pay charges for the grouping, classifying service as prescribed”.

2. To amend and supplement point 7.3.c as follows:

"c) Documents evidencing the grounds for enjoying the right of priority (copies of the initial application(s), with certification of the application-receiving agency, except for PCT application); the list of goods and services in the initial trademark registration application; the paper on transfer of the right of priority in case the applicant enjoys that right from another person.

3. To amend and supplement point 20.3 as follows:

“20.3. Maintenance of validity of invention protection titles

a) To maintain the validity of invention protection title, the protection title holder shall pay a validity maintenance fee within six months before the expiration of the validity term. The payment of the validity maintenance fee may be delayed for no more than six months after the expiration of the current validity term but the protection title holder shall pay the maintenance fee plus 10% for each month of delayed payment.

b) The National Office of Intellectual Property shall consider the validity maintenance within 10 working days after receiving request and validity maintenance fee. If request is valid, the National Office of Intellectual Property shall record into The National registration Book of Inventions.

In request of validity maintenance has shortcoming or be invalid, the National Office of Intellectual Property shall issue notification and define time limit of 01 month since day of issuing notification for the requester to fix shortcoming or giving opinion to oppose. If during the defined time limit the requester fails to fix shortcoming or fails to meet requirement upon fixing shortcoming, has no idea to oppose or has idea to oppose but not exact, the National Office of Intellectual Property shall issue an notification to refuse the validity maintenance”.

4. To amend and supplement point 20.4.a as follows:

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

The validity of an industrial design patent may be extended at most continuous twice, for each period of five years. If the protected industrial design has many variations of an industrial design, the validity of patent may be extended for all or some variations, in which there must be basic variation.

The validity of a certificate of registered trademark may be extended many continuous times, for each period of ten years, wholly or partly list of goods, services.”

5. To amend and supplement point 33.5.e as follows:

“e. The section of description of the industrial design must satisfy the provisions in clause 2 Article 103 of Law on intellectual property, and should be described in details as follows:

(i) To fully disclose the nature of the industrial design requesting to be protected, in which 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 at Point 33.5.c above and consistent with design features shown in the set of photos or drawings;

(ii) Design features of the industrial design requesting 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 with cover or foldable), its industrial design must be described in different states;

(iv) If an industrial design consists of many variations, distinctive characteristics of the basic variation (the first variation stated in the application) in comparison with those of remaining variations 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”.

6. To amend and supplement point 33.6 as follows:

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

An applicant shall submit 04 sets of photos or 04 sets of drawings of an industrial design. Sets of photos or drawings must fully present design features of the industrial design requesting to be protected, based on which any person with average knowledge in the corresponding field can identify that industrial design, and follow the following guidance:”.

7. To amend and supplement point 37.4.e as follows:

“e) The section “List of goods and services bearing the trademark” in the written declaration must be divided into groups in accordance with the International Classification of Goods and Services under the Nice Agreement published by the National Office of Intellectual Property in the Industrial Property Official Gazette. If the applicant cannot self-classify, or self-classify inaccurately, the National Office of Intellectual Property shall classify and the applicant must pay charges for the classification service as prescribed.”

8. To amend and supplement point 37.5 as follows:

“37.5. Requirements for trademark specimens:

In addition to the trademark specimen attached to the written declaration, the application must be enclosed with 05 identical trademark specimens that satisfy the following requirements:”.

9. To amend and supplement point 47.1 as follows:

47.1. A dossier for registration of a contract on transfer of industrial property rights comprises a set of documents as follows:

- a) 02 copies of the written declaration for registration of the contract on transfer of industrial property rights, made according to form 01-HDCN specified in Annex D of this Circular;
- b) 01 contract (original or authenticated copy 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 have the parties' signatures for certification or every two adjoining pages must be appended with a seal on their inner edges;
- c) Original protection title;
- d) Written consent of co-owners to the transfer of industrial property rights, if those industrial property rights are under common ownership;
- e) Power of attorney (if the dossier is filed through a representative);
- g) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)".

10. To amend and supplement point 53.2 as follows:

“53.2. Dossiers of application for practice certificates

A dossier of application for an industrial property representation service practice certificate must comprise a set of documents as follows:

- a) Two copies of the written declaration for requesting grant of an industrial property representation service practice certificate (practice certificate), made according to form 01-CCHN specified in Annex E of this Circular;
- b) A copy of the notice on the pass of an examination of professional qualifications for industrial property representation organized by the National Office of Intellectual Property;
- c) 02 3x4 cm photos;
- d) Copy of identification card;
- e) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)".

11. To amend and supplement point 59.2 as follows:

“59.2. Registration for participation in examination:

- a) Only persons fully satisfying the conditions specified at Points a through dd, Clause 2, Article 155 of the Intellectual Property Law are allowed to register for participation in examination according to the provisions of this Point.

b) Dossier of registration for participation in the examination filed to the National Office of Intellectual Property must comprise 01 set of documents as follows:

(i) Two copies of the written declaration for registration for participation in the examination, made in according to the Form 05-KTNV specified in Annex E of this Circular;

(ii) Copy of the university diploma (present original for comparison, unless the copy has been authenticated);

(iii) Documents proving that the person registering participation in examination has been trained in industrial property law or is experienced in this operation:

- Copies of certificates of graduation from training courses on industrial property law recognized by the Ministry of Science and Technology (present originals for comparison, unless the copies have been authenticated); or

- Graduation or postgraduate dissertation on industrial property and certificate of the training establishment where the dossier- filing person has made his/her dissertation; or

- Copy of decision on recruitment or labor contract and other document (with confirmation of agency, organization where the dossier-filing person working) proving that the dossier-filing person has been personally engaged in the appraisal of industrial property registration applications at a national or international industrial property office for five or more consecutive years or in industrial property law-related activities defined at Point d, Clause 2, Article 155 of the Intellectual Property Law, including inspection, examination, procuracy, adjudication, legal affairs, consultancy on industrial property law; or scientific research with title of industrial property researcher or lecturers (present originals for comparison, unless the copies have been authenticated)

(iv) 02 3x4 cm photos;

(v) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)”.

12. To amend and supplement point 59.5 as follows:

“59.5. Organization of examination

a) An examination shall be organized periodically for 02 years/time.

b) Exam papers shall be marked by the Examination Council according to the approved answers and score frame.

c) Examination results shall be notified by the National Office of Intellectual Property to examinees. Examinees may request the National Office of Intellectual Property to review

examination papers and the Examination Council shall review examination papers according to the regulations of the director of National Office of Intellectual Property.

Examination results shall be valid for 05 years for the application for grant of industrial property representation service practice certificates”.

13. To amend items “dividing into groups”, “classification” of declaration Forms 01-SC, 03-KDCN, 04-NH in Annex A as follows:

To supplement notes: “If the applicant cannot self-group, self-classify or self-group, self-classify accurately, the National Office of Intellectual Property shall implement this work and the applicant must pay charges for the grouping, classifying service as prescribed”.

14. To amend item “Documents in application” of declaration Forms 01-SC, 02-TKBT, 03-KDCN, 04-NH, 05-CDDL in Annex A, 01-SDD, 02-CGD, 03-YCTD in Annex B, 01-SDVB, 02-GHVB, 03-PBVB, 04-CDHB, 05-KN, 06-DKQT, 07-DKCD, 08-SDQT in Annex C, 01-HDCN, 02-HDSD, 03-SDHD, 04-CGGB in Annex D, 01-CCHN, 02-CLCC, 05-KTNV in Annex E and 01-YCTCSC, 02-YCTCKD and 03-YCTCNH in Annex F as follows:

To replace “fee and charge receipts” by “Copies of fee and charge receipts” (in case paying fees, charges via postal services or directly remit into account of the National Office of Intellectual Property)”.

15. - To annul item “Time limit for extension” and amend and supplement item “objects of extension” of the declaration Form No. 02-GHVB in Annex C as follows:

“-The industrial design patent – variations need be extended:

- Certificate of registered trademarks – Groups or products, services need be extended: ...”

16. To annul item “Confirmation of People’s Committee of commune, ward, and township for permanent residence of application owner” of declaration form No. 01-CCHN and 05-KTNV in Annex E.

Article 2. To amend and supplement some points of the Circular No. 01/2008/TT-BKHCN amended in 2009 as follows:

1. To amend provision in point b and point c clause 1 section II as follows:

“b) The subject on industrial property law is content being examined compulsorily for all specialized sectors on assessment.

Persons who have at least 15 consecutive years working as drafting and guiding execution of legal documents on industrial property, industrial property assessment, settling disputes, complaints, denunciations, inspections on industrial property at state management agencies of industrial property, studying and teaching law on industrial property at organizations of studying

and training established and operate lawfully or consulting law on industrial property under name of the industrial property representative shall be exempted from examination for subject on industrial property law.

c) The assessment specialized subjects include assessment of inventions (including utility solutions) and layout designs of semiconductor integrated circuits, assessment of industrial designs, assessment of trademarks and geographical indications (including goods origin appellations) and assessment of other industrial property rights are contents of examination for corresponding specialized assessments.

Persons who have at least 15 consecutive years working as explaining, guiding implementation of law regulations, elaborating regulations, directly implementing or approving result of appraisal (testing) of content of application for registration of inventions (including utility solutions), application for registration of industrial designs, application for trademark registration, geographical indication registration (including goods origin appellations) at national or international industrial property agencies, shall be exempted from examination for corresponding specialized subjects on assessment.

Persons who have at least 15 consecutive years directly conducted procedures for setting up, execution of industrial property right under name of industrial property presentative shall be exempted 01 specialized subject on assessment corresponding to sector which they have implemented most matters.”

2. To amend, supplement provision in clause 4 section II as follows:

“4. Dossier of registration for participation in examination

Dossier of registration for participation in examination includes 01 set of documents as follows:

a) 02 declarations of registration for participation in examination on industrial property assessment professional qualifications, made in according to Form specified in Annex I of the Circular.

b) Copy of university or postgraduate degree (present original for comparison, unless the copy has been authenticated);

c) Copies of decisions on recruitment or labor contracts and other documents proving actual professional activities (present originals for comparison, unless copies has been authenticated), if person registering participation in examination request to be exempted exam subject stated in point b and point c clause 1 section II of this Circular;

d) 02 3x4 cm photos;

e) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)”.

3. To amend, supplement provision in point c clause 6 section II as follows:

“Within 02 months from the day of examination, the chairperson of Examination Council shall notify result of examination for exam participants and grant certificates of professional qualification to do as industrial property assessor, which are made in according to Form specified in Annex V of this Circular, for persons meeting requirements with respect to all exam subjects, in which clearly stating the assessment specialized sector corresponding to exam subject and defining the valid time of certificate (used as document to file dossier requesting grant of assessor card) is 05 year as from the day of granting”.

4. To amend, supplement provision in clause 2 section III as follows:

“2. Dossier requesting grant of assessor card

Dossier requesting grant of assessor card includes a set of documents as follows:

a) 02 declarations on request for grant of assessor card, made in according to the Form specified in Annex II of this Circular;

b) The copy of certificate of professional qualification to do as industrial property assessor which being granted by chairperson of Examination Council as prescribed in point c, clause 6 section II of this Circular;

c) Copy of identification card;

d) 02 3x4 cm photos;

e) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)”.

5. To amend, supplement provision in point c clause 4 section III as follows:

“c) Provisions in clause 2 and clause 3 section III of this Circular shall be apply to procedures for re-grant of assessor card; except for documents specified in point b clause 2 and time limit for the National Office of Intellectual Property to consider dossier is 15 days, from the day of receiving dossier”.

6. To amend, supplement provision in clause 2 section IV as follows:

“2. Dossier requesting for grant of certificate of assessment organization

Dossier requesting for grant of certificate of assessment organization includes a set of documents as follows:

a) 02 declarations on request for grant of certificate of assessment organization, made in according to the Form specified in Annex III of this Circular;

b) Copies of Enterprise registration certificate, Certificate of registration of science-technological operation or Operation Registration for law-practicing organizations (present originals for comparison, unless copies have been authenticated);

c) Copies of decisions on recruitment or labor contracts between organization and industrial property assessors operating for organization (present originals for comparison, unless copies have been authenticated);

d) Copies of fee and charge receipts (in case paying fee and charge via postal services or directly remit into account of the National Office of Intellectual Property)".

7. To amend, supplement provision in point c clause 4 section IV as follows:

“c) Provisions in clause 2 and clause 3 section IV of this Circular shall be apply to procedures for re-grant of assessment organization Certificate; except for decision documents specified in point b and point c clause 2 and time limit for the National Office of Intellectual Property, Departments of Science and Technology to consider dossier is 15 days, from the day of receiving dossier”.

8. To replace Declaration Forms in Annexes I, II and III by Declaration Forms specified in Annexes I, II and III of this Circular.

Article 3. Effectiveness

This Circular takes effect after 45 days from the day of signing.

**FOR THE MINISTER OF SCIENCE
AND TECHNOLOGY
DEPUTY MINISTER**

Nguyen Quan