

THE NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM

LEGISLATURE XI, SESSION 8

**INTELLECTUAL PROPERTY LAW**

*Pursuant to the Constitution 1992 of the Socialist Republic of Vietnam as amended and supplemented by the Resolution No. 51, 2001, QH10 of the 10th Section of the 10th National Assembly dated 25 December, 2001;*

*This Law stipulates intellectual property rights.*

**PART ONE**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Law stipulates copyright, copyright - related rights; industrial property rights; rights in plant varieties and for the protection of these rights.

**Article 2. Applicable subjects**

This Law applies to Vietnamese organizations and individuals, foreign organizations and individuals that satisfy the requirements stipulated in this Law and international treaties to which the Socialist Republic of Vietnam is party.

**Article 3. Objects of intellectual property rights**

1. Objects of copyright include literary, artistic and scientific works; objects of copyright - related rights include performances, sound recordings, video recordings; broadcasting programs; satellite signals carrying encrypted program.
2. Objects of industrial property rights include inventions; industrial designs; layout-designs of semiconductor integrated circuits; business secrets; trademarks; trade names and geographical indications.
3. Objects of rights to plant varieties are plant varieties and its propagating materials.

**Article 4. Interpretation of terminologies**

In this Law, the following terminologies shall be understood as follows:

1. *Intellectual property rights* are the rights of organizations, individuals to their intellectual property, including copyrights and copyright - related rights, industrial property rights and rights to plant varieties.
2. *Copyrights* are the rights of organizations, individuals to works created or owned by them.
3. *Copyright - related rights* (hereinafter referred to as related rights) are the rights of organizations, individuals to performances, phonograms, broadcasting programs, satellite signals carrying

encrypted program.

4. *Industrial property rights* are the rights of organizations, individuals to inventions; industrial designs; layout-designs of semi-conductor integrated circuits; trademarks; trade names, geographical indications, business secrets created or owned by them and rights to repression of unfair competition.
5. *Rights to plant varieties* are the rights of organizations, individuals to the new plant varieties which are created or discovered and developed by and fall under the ownership right of such organization or individuals.
6. *Intellectual property right holder* is the owner of the intellectual property right or an organization, individual that is assigned the right by the owner.
7. *Work* is every production created in the literary, artistic and scientific domain, whatever may be the mode or form of its expression.
8. *Derivative work* is a work translated from one language to another, adapted, modified, transformed, compiled, annotated and selected work.
9. *Published work, phonogram* is a work or a phonogram already released with consent of copyright owner, related right owner for the purpose of being disseminated to the public with a reasonable amount of copies.
10. To *reproduce* means the making of one or more copies of a work or a phonogram in whatever mode or form, including permanent or provisional backup of the work in electronic form.
11. *Broadcasting* means the transmission by wire or wireless means, including through the satellite, of sounds or images and sounds of a work, a performance, a phonogram or a broadcasting program to the public for its reception at a place or at a time select by them.
12. *Invention* is a technical solution, in form of a product or a process, to resolve a specific problem by utilizing laws of nature.
13. *Industrial design* is appearance of a product expressed in shapes, lines, dimensions, colors or any combination thereof.
14. *Semiconductor integrated circuit* is a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. "Integrated circuit" is synonymous with "IC", "chip" and "microelectronic circuit".
15. *Layout-design of a semiconductor integrated circuit* (hereinafter referred to as "layout-design") is a three-dimensional disposition of circuitry elements and interconnections of such elements in a semiconductor integrated circuit.
16. *Trademark* is any sign used to distinguish goods or services of different organizations and individuals.
17. *Collective mark* is a mark used to distinguish goods or services of members from those of non-members of an organization that is the owner of the mark.
18. *Certification mark* is a mark licensed by its owner to other organizations, individuals to use for their goods or services in order to certify characteristics in respect of origin, materials, raw materials and methods of goods production or methods of services supply, quality, accuracy, safety or other characteristics of such goods or services.

19. *Associated marks* are marks that are registered by the same owner, identical or similar to each other and are used for identical or similar or inter-related goods and services.
20. *Well-known mark* is a mark widely known throughout territory of Vietnam.
21. *Trade name* is a designation of an organization or individual used in business to distinguish the business entity bearing such designation from other business entities acting in the same field and area of business.  
The area of business stipulated in this paragraph shall be the geographical area where business entity has business partners, clients or reputation.
22. *Geographical indication* is a sign used to indicate a product originating from a specific area, locality, region or country.
23. *Business secret* is information obtained from financial, intellectual investment which is undisclosed and susceptible to application in business.
24. *Plant variety* is a plant grouping within a single botanical taxon of the lowest known rank, uniform of morphological, stability in the propagation circle, which can be distinguished by the phenotype expressed by a genotype or the combination of genotypes and distinguished from other plant grouping in at least one genetic phenotype.
25. *Protection title* is a document granted by a State authority to an organization, individual to establish industrial property rights to inventions, industrial designs, layout designs, marks, geographical indications; and rights to plant varieties.

#### **Article 5. Application of laws**

1. Where there are intellectual property related civil issues not being stipulated in this Law, the provisions of Civil Code shall be applied.
2. Where there is any difference between provisions on intellectual property rights of this Law and those of other laws, the former shall be applied.
3. Where the provisions of the international treaties to which the Socialist Republic of Vietnam is party contravene the provisions of this Law, the former shall be applied.

#### **Article 6. Basis of appearance, establishment of intellectual property rights**

1. Copyrights shall arise at the moment when a work is created and expressed in a certain material form regardless of its content, quality, form, mean, language, whether or not it has been published or registered.
2. Related rights shall arise at the moment when a performance, a phonogram, a broadcast program and a satellite signal carrying encrypted program is fixed without prejudice to copyrights.
3. Intellectual property rights shall be established as follows:
  - a) Industrial property rights in inventions, industrial designs, layout-designs, marks, geographical indications shall be established on the basis of the competent state authority's decision on the grant of Protection Title in accordance with registration procedures stipulated in this Law or on the recognition of international registration under international treaties to which the Socialist Republic of Vietnam is party; in terms of for well-known marks, the ownership rights shall be established on the basis of use independently from registration procedures.
  - b) Industrial property rights to trade names shall be established on the basis of lawful use of the trade names.

- c) Industrial property rights in business secrets shall be established on the basis of legal acquirement and secret keeping of the business secrets;
  - d) Right to repression of unfair competition shall be established on the basis of competition in business.
4. Rights to new plant varieties shall be established on the basis of the competent state authority's decision on the grant of Plant Variety Protection Title in accordance with registration procedures stipulated in this Law.

#### **Article 7. Restrictions of intellectual property rights**

1. Intellectual property rights owner is allowed to implement his or her right within the scope and the term of protection stipulated in this Law.
2. The exercise of intellectual property rights shall not infringe upon interests of the state, the public or legitimate rights and interests of other organizations, individuals and shall not violate other applicable provisions of relevant law.
3. In circumstances in order to ensure the objectives of national defense, security, people living and other interests of the nation and society as referred to in this Law, the State has the right to prohibit or limit the intellectual property right holders from or to the exercise of their rights or compel them to license other organizations, individuals to use one or more of their rights subject to appropriate conditions.

#### **Article 8. State policies on intellectual property rights**

1. To recognize and protect the intellectual property rights of organizations and individuals on the basis of ensuring the equal benefits of intellectual property rights holders and the public interest; not to protect the intellectual property objects which are contrary to the social morality, public order or harmful to national defense and security.
2. To encourage and promote creation activities, exploitation intellectual property assets to contribute to the socio-economic development and to improve people's material and spiritual life.
3. To provide financial assistance to assignment, exploitation intellectual property rights for the public interests; to encourage national and foreign organizations, individuals in financing creation activities and intellectual property rights protection.
4. To give priority to investment in training, improving officials, civil servants, related people in the field of intellectual property rights protection and research, application of science and technologies for intellectual property rights protection.

#### **Article 9. Rights and responsibilities of organizations, individuals in protection of intellectual property rights**

Any organizations, individuals shall have the rights and responsibilities to take appropriate measures permitted by law in order to protect their own intellectual property rights and must respect intellectual property rights of others in accordance with this Law and other applicable provisions of law.

#### **Article 10. Contents of the state administration of intellectual property**

1. Formulation and direction of the implementation of strategies of and policies on intellectual property rights protection;
2. Promulgation and organization of the implementation of legal instruments on intellectual property;
3. Organization of the intellectual property administration mechanism; train and foster a line-up of IP officers

4. Grant and implementation of other procedures concerning to Copyright Registration Certificates, Related right Registration Certificates, Protection Titles of Industrial Property Objects, Plant Variety Protection Titles;
5. Inspection and control the observance of intellectual property legislation; resolution appeals and denunciations; and dealing with breaches in respect of intellectual property legislation;
6. Organization activities of the information and statistics on intellectual property;
7. Organization and management of intellectual property assessment activities;
8. Education, propagation, popularization of knowledge of and law on intellectual property;
9. International cooperation on intellectual property.

#### **Article 11. Responsibilities of the state administration of intellectual property**

1. The Government shall exercises centrally the state administration of intellectual property.
2. Ministry of Science and Technology shall be responsible to the Government for taking lead and coordinating with Ministry of Culture and Information, Ministry of Agriculture and Rural Development in the carrying out of state administration of intellectual property and carry out the state administration of industrial property rights.

The Ministry of Culture and Information, within its responsibility and competence, shall carry out state administration of copyrights and related rights.

The Ministry of Agriculture and Rural Development, within its responsibility and competence, shall carry out State administration of rights in plant varieties.

3. Ministries, authorities of ministerial-level or subordinated to the Government, within its responsibility and competence, shall be responsible for coordinating with the Ministry of Science and Technology, the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development and the People's Committee of provinces, cities under the central government in carrying out state administration of intellectual property.
4. The People's Committee at all level shall carry out State administration of intellectual property at the local areas within its competence.
5. The Government shall regulate on competence and responsibility for state administration of intellectual property of the Ministry of Science and Technology, the Ministry of Culture and Information, the Ministry of Agriculture and Rural Development and the People's Committee at all level.

#### **Article 12. Intellectual property fees and charges**

Organizations and individuals must pay fees and charges when conducting intellectual property related procedures in accordance with this Law and other provisions of relevant legislation.

### **PART TWO**

### **COPYRIGHTS AND RELATED RIGHTS**

#### **Chapter I**

#### **PROTECTION CONDITIONS OF COPYRIGHTS AND RELATED RIGHTS**

##### **Section 1. Protection conditions of copyrights**

#### **Article 13. Authors, owners of copyright having copyrighted works**

1. Organization and individual having protected copyrights include persons who have directly created the work and copyrights owners stipulated from Article 37 to Article 42 of this Law.

2. Authors and owners of copyrights stipulated in paragraph 1 of this Article include Vietnamese organizations, individuals; foreign organizations, individuals of which works firstly published in Vietnam and has not been published in any foreign country or simultaneously published in Vietnam in a duration of 30 days from its first publication in other nations; Foreign organizations, individuals of which works eligible for protection in Vietnam in accordance with international treaties to which the Socialist Republic of Vietnam is party.

#### **Article 14. Forms of protected works**

1. Literary, artistic and scientific works protected including:
  - a) Literary and scientific works, textbooks, teaching materials, and other works expressed in forms of letters or other writing characters;
  - b) Lectures, presentations and other speeches;
  - c) Journalistic works;
  - d) Musical works;
  - d') Dramatic works;
  - e) Cinematographic works and works created by similar methods (hereinafter referred to as cinematographic works);
  - g) Fine art works and applied art works;
  - h) Photographic works;
  - i) Architectural works;
  - k) Graphics, sketches, maps, drawings relevant to topography and scientific works;
  - l) Folk artistic and literary works.
  - m) Computer programs and compilations of data
2. Derivative works shall only be protected according to paragraph 1 of this Article if they do not infringe the copyrights in respect of the works used to make derivative works.
3. Protected works stipulated in paragraphs 1 and 2 of this Article must be created directly by author's intelligence without reproducing others' works.
4. The Government sets out guidelines in details forms of protected works as stipulated in paragraph 1 of this Article.

#### **Article 15. Subject matter excluded from copyrights protection**

1. Information just for the purposes of communication;
2. Legal normative documents, administrative documents, other documents in the judicial sector and the official translation thereof.
3. Processes, systems, method of operation, definitions, principles and statistics.

#### **Section 2. Conditions of protection of related rights**

#### **Article 16. Protected organizations, individuals of related rights**

1. Actors, singers, musicians, dancers and others who perform literary and artistic works (hereinafter referred to as performers);
2. Organizations, individuals that are owners of the performances stipulated in Article 44.1 of this Law.
3. Organizations, individuals that make fixation of sounds, images of a performance for the first time or other sounds and images (hereinafter referred to as producers of phonograms).

4. Organizations that take the initiative of and carry out the broadcast (hereinafter referred to as broadcasting organizations).

#### **Article 17. Subject matters of related rights protection**

1. A performance shall be protected if it is one of the following cases:
  - a) Performance of Vietnamese citizens performed in Vietnam or abroad;
  - b) Performance of foreigners performed in Vietnam;
  - c) Performance fixed on a phonogram that is protected in accordance with Article 30 of this Law;
  - d) Performance that has not been fixed on a phonogram but is broadcasted and such broadcast are protected in accordance with Article 31 of this Law;
  - d') Performance protected in accordance with international treaties to which the Socialist Republic of Vietnam is party.
2. A phonogram shall be protected if it is one of the following cases:
  - a) Phonogram of producer who is with Vietnamese nationality;
  - b) Phonogram of the producer protected in accordance with international treaties to which the Socialist Republic of Vietnam is party.
3. A broadcast, a satellite signal carrying encrypted program shall be protected if it is one of the following cases:
  - a) Broadcast, satellite signal carrying encrypted program of an organization with Vietnamese nationality;
  - b) Broadcast, satellite signal carrying encrypted program of the organization protected in accordance with international treaties to which the Socialist Republic of Vietnam is party.
4. Performances, phonograms and broadcasts and satellite signals carrying encrypted program shall only be protected as stipulated in paragraph 1, 2, 3 of this Article provided that they do not influence the copyrights exercise.

### **Chapter II**

#### **CONTENTS, LIMITATIONS AND DURATION OF PROTECTION OF COPYRIGHTS, RELATED RIGHTS**

##### **Section 1. Contents, limitations and terms of protection of copyrights**

#### **Article 18. Copyrights**

Copyrights to works stipulated in this Law include personal rights and property rights.

#### **Article 19. Personal rights**

Personal rights include the following rights:

1. To name his or her work;
2. To put his or her real name or pseudonym in the work; to have his or her real name or pseudonym mentioned when his or her work is published or used;
3. To publish his or her work or authorize another person to do so;
4. To protect the integrity of his or her work, to object to any alteration, mutilation, distortion or other modification in any form which prejudice against his or her honor and prestige.

#### **Article 20. Property rights**

1. Property rights include the following:
  - a) To create the derivative work;
  - b) To perform the work to the public;
  - c) To reproduce the work;
  - d) To circulate to the public the original or copies of the work;
  - d') To communicate the work to the public by wire or wireless means, through electronic information network or by any other technical means;
  - e) To lease the original or copies of a cinematographic work or a computer program.
2. The rights referred to in clause 1 of this Article shall be exercised by the author [or] the owner of exclusive copyright or by another person with the owner's permission in accordance with this Law.
3. Organizations, individuals who exploit or use one, several or all of the rights stipulated in paragraph 1 of this Article and paragraph 3 of Article 19 of this Law must ask for permission from the copyright owners and pay them with royalties, remuneration and other material benefits.

#### **Article 21. Copyrights to cinematographic works and dramatic works**

1. Persons who are directors, editors, cameramen, stage managers, composers, art-designers, sound-men, lighting-men, studio artists, studio-instrument managers, high-tech makers and others doing creative jobs related to cinematographic works shall have the rights as stipulated in Article 19.1, 2 and 4 of this Law and other rights as agreed.

Persons who are directors, editors, choreographer, composers, art-designers, sound-men, lighting-men, stage artists, stage-instrument managers, high-tech makers and others doing creative jobs related to dramatic works shall have the rights as stipulated in Article 19.1, 2 and 4 of this Law and other rights as agreed.

2. Organizations and individuals who invest finance and other material and technical facilities in making cinematographic works and dramatic works shall be the rights owners stipulated in Article 19.3 and Article 20 of this Law.
3. Organizations and individuals stipulated in Paragraph 2 of this Article shall have the obligations to pay royalties, remuneration and other physical benefits determined by agreement with persons stipulated in Paragraph 1 of this Article.

#### **Article 22. Copyrights to computer programs and compilations**

1. Computer program is a set of instructions which is expressed in forms of commands, codes, diagrams or the like, to be readable by a computer in order to bring a certain result.

Computer programs shall be protected as a literary work regardless of them being expressed in the source code or object code.

2. Compilation is a collection of data in a creative way showed in the selection, arrangement of documents in electronic form or others.

The copyrights protection of compilation does not include the protection of documents themselves and must not prejudice the copyrights of these documents.

#### **Article 23. Copyrights to folk artistic and literary works**

1. Folk artistic and literary works mean the productions of collective creations based on traditions of a community or individuals reflecting expectations of such community of which the expression appropriate to its cultural and social characters, and its criteria and values are handed down orally or by imitation or the like, Folk artistic and literary works comprise the following:



- a) Folk tales, poetry and riddles;
  - b) Folk songs and instrumental folk music;
  - c) Folk dances, plays, ceremonials and games;
  - d) Musical instruments, drawings, paintings, sculptures, architectural models which are created in any materials.
2. Organizations and individuals when using such works must indicate the origins of those expressions of folklore and protect their real values.

**Article 24. Copyright to literary, artistic and scientific works**

The protection of the copyright to literary, artistic and scientific works referred to in Article 14.1 of this Law shall be specified by the Government.

**Article 25. Use of published works without obtaining permission and paying royalties, remuneration**

1. The following forms of use of published works without obtaining permission and paying any royalties, remuneration:
  - a) Self - reproducing one single copy for the purposes of science research and individual teaching;
  - b) Reasonable quoting works without alteration of their contents for commentary or for illustration in one's own works;
  - c) Quoting from a work without alteration of their contents for use in articles, periodic journals, radio and television programs and documentary films;
  - d) Quoting from a work for teaching in schools without alteration of the contents not for commercial purposes;
  - d') Copying a work for archives in libraries for the purposes of research;
  - e) Performing dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns without any form of charges;
  - g) Directly recording and reporting performances for public information and educational purposes;
  - h) Taking pictures of or televising works of fine art, photographic, and applied art that have already been publicly displayed for introduction purposes;
  - i) Translating a work into Braille or the like;
  - k) Importing copies of others' works for personal use only.
2. Persons and legal persons who use the works as stipulated in Paragraph 1 of this Article shall not make any affect to normal exploitation of the works or prejudice the rights of the authors or copyright owners; they must provide information about the name of the authors and origins of works.
3. Any use of works as stipulated in paragraph 1 of this Article is not applicable to architectural, fine art works or computer programs.

**Article 26. Use of published works without obtaining permission but paying royalties, remuneration**

1. Broadcasting organizations using published works for the purpose of carrying out broadcasting programs with sponsorship, advertisements or collection of money in any form shall not be liable for obtaining permission from, but shall be liable to pay royalties or remunerations to, the copyright owner in accordance with the Government regulations,
2. Organizations and individuals when using the works stipulated in paragraph 1 of this Article must

not influence the normal exploitation of works and must not prejudice rights of authors or copyright owners, and must provide information about the name of the author and origin of the works.

3. The use of works referred to in clause 1 of this Article shall not apply to cinematographic works.

#### **Article 27. Terms of copyrights protection**

1. Personal rights stipulated in Articles 19.1, 19.2 and 19.4 of this Law shall be protected indefinitely.
2. Personal rights stipulated in Article 19.3 and property rights stipulated in Article 20 of this Law shall be protected with the following terms:
  - a) Cinematographic works, photographic works, dramatic works, applied art works, anonymous works shall have the term of protection of 50 years from their first publications. If within 50 years from the fixation, cinematographic work, dramatic works have not been published, the term of protection shall be 50 years from the fixation date of the work; with regard to an anonymous work, when information relating to the author is available, the term of protection shall be counted as stipulated in paragraph b of this clause;
  - b) Other works of any other type not referred to in clause 2(a) of this Article shall have the term of protection being during the life of the author and for 50 years from the year of his or her death; in respect of works created by co-authors, the term of protection shall be ended at the 50th year after the year of death of the last surviving co-author.
  - c) Terms of protection stipulated in paragraph 2.a and 2.b of this Article shall be ended at 24 o'clock of the date of 31 December of the year when the protection term ends.

#### **Article 28. Copyrights infringement**

1. Seizing copyrights of a literary, artistic, scientific work;
2. Assuming the author's name of a work;
3. Publishing, disseminating a work without its author's permission;
4. Publishing, disseminating a co-author work without permission of other co-author(s);
5. Modifying, mutilating or distorting a work in any forms, which is prejudicial to the author's honor and prestige;
6. Copying a work without permission of the author or the copyrights owner, except for the cases stipulated in Articles 25.1.a and 25.1.dd of this Law;
7. Make derivative works without permission of the author or the copyrights owner of the work used to make such derivative work, except forms of use of works stipulated in Article 25.1.i of this Law;
8. Exploiting a work of without permission of copyrights owner, without paying royalties and remuneration and other material benefits under the law; except forms of use of works stipulated in Article 25.1 of this Law;
9. Renting a work without any payment of royalties, remuneration and other material benefits to its author and copyrights owner;
10. Photocopying, producing, disseminating, publishing, displaying or communicating a work to the public by broadcasting network or digital devices without permission of the copyrights owner;
11. Publishing a work without permission of the copyrights owner;
12. Intentionally canceling or invalidating technical methods applied by the copyrights owner to protect copyrights of his or her work;

13. Intentionally erasing or amending electronic information on copyrights management of a work;
14. Producing, assembling, altering, distributing, importing, exporting, selling or leasing an item of equipment when knowing or having basis to know that such equipment is used for invalidating the technical measures taken by the copyright owner to protect the copyright to his/her works.
15. Making and selling a work of which the author's signature is being forged;
16. Exporting, importing, disseminating copies of a work without permission of the copyrights owner.

## **Section 2. Contents, limitations and terms of related rights**

### **Article 29. Rights of performers**

1. Performers who are at the same time investment owners have personal rights and property rights to their performances; where performers are not investment owners, they shall have the personal rights and the investment owner shall have the property rights in respect of such performances.
2. Personal rights include the following rights:
  - a) Acknowledge performer's name upon the performance or distribution of phonograms, or broadcast of his or her performance
  - b) Protect his or her performance image and object to any modification, mutilation, distortion of his or her performances in any form that would be prejudicial to his or her honor and prestige;
3. Property rights include the exclusive right to carry out or to authorize any of the followings:
  - a) Fix his or her live performance in phonograms;
  - b) Directly or indirectly reproduce a fixation of his or her performance;
  - c) Broadcast and communicate to the public his or her unfixed performance, except where such performance for broadcasting purposes.
  - d) Distribute to the public a fixation of his or her performance or copies thereof by sale, rental, or any other technical means accessible to the public.
4. Organizations and individuals when exploiting and using the rights stipulated in Paragraph 3 of this Article shall have the obligation to pay remuneration to performers as stipulated by law or as agreement.

### **Article 30. Rights of producers of phonograms**

1. The producer of a phonogram shall have the exclusive right to carry out or authorize any of the following acts:
  - a) Directly or indirectly reproduce his or her phonogram;
  - b) Distribute to the public the original or copies of the phonogram by sale, rental or distribution or any other technical means accessible to the public;
2. The producer of a phonogram shall have the right to get material benefits when his or her phonogram is distributed to the public.

### **Article 31. Rights of Broadcasting Organizations**

1. A broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:
  - a) Broadcast or rebroadcast its broadcast
  - b) Distribute to the public its broadcast
  - c) Fix its broadcast
  - d) Reproduce a fixation of its broadcast

2. A broadcasting organization shall have the right to get material benefits when their broadcasting programs are recorded, broadcasted and distributed to the public.

**Article 32. Use of related rights without obtaining permission and paying royalties and remuneration**

1. The following forms of use of related rights shall not require obtaining permission and paying royalties and remuneration:
  - a) Duplication by oneself of one single copy of works for the purpose of personal scientific research;
  - b) Duplication by oneself of one single copy of works for the purpose of teaching activities, except when phonograms, or broadcasting programs have been published for teaching.
  - c) Reasonable quotation the purpose of providing information only;
  - d) A broadcasting organization temporarily makes a phonogram by itself for broadcasting when it is entitled to the right to broadcast.
2. Persons and legal persons who use the rights as stipulated in paragraph 1 of this Article do not make any affects to the normal exploitation of the performances, phonograms and broadcasting programs, and do not prejudice the rights of the performers, phonogram producers or broadcasting organizations.

**Article 33. Use of related rights without obtaining permission but paying royalties and remuneration**

1. Organizations and individuals using related rights in the following cases shall not be liable for obtaining permission from, but shall be liable to pay royalties or remunerations as agreed to, the authors, copyright owners, performers, sound/video recordings and broadcasting organizations:
  - a) Directly or indirectly using a published sound/video recording for commercial purpose in order to carry out broadcasting programs with sponsorship, advertisements or collection of money in any form.
  - b) Using a published sound/video recording in their business and commercial activities.
2. Organizations and individuals using the rights as referred to in clause 1 of this Article must not influence the normal exploitation of performances, sound/video recordings and broadcasting programs and must not prejudice to the rights of performers, sound/video recording producers and broadcasting organizations.

**Article 34. Terms of Related Rights Protection**

1. Rights of a performer shall be protected during the term of 50 years following the year of fixation of the performance.
2. Rights of a producer of phonograms shall be protected during the term of 50 years following the year of publication of the phonogram or during the term of 50 years following the year of fixation if the phonogram has not been published.
3. Rights of a broadcasting organization shall be protected during the term of 50 years following the year of broadcast of the program.
4. Terms of protection stipulated in paragraphs 1, 2 and 3 of this Article shall end at 24 o'clock of 31 December of the year when term of related rights protection ends.

**Article 35. Related Rights Infringement**

1. Abrogating the rights of performers, producers of phonograms, broadcasting organizations;

2. Assuming the names of performers, producers of phonograms, broadcasting organizations;
3. Publishing, producing and communicating to the public fixed performances, phonograms, broadcasts without the permission of performers, producers of phonograms, broadcasting organizations;
4. Modifying, mutilating or distorting performances in any form which prejudice to honor and prestige of performers;
5. Reproducing, extracting fixed performances, phonograms, broadcasts without the permission of performers, producers of phonograms, broadcasting organizations;
6. Removing or altering any right management information in electronic format without permission of the related right owner
7. Intentionally canceling or invalidating technical methods applied by the related right owner to protect his or her related rights.
8. Distributing, importing for distribution, broadcasting, communicating to the public performances, fixed copies of performances or phonograms when knowing or having basis to know that the right management information in electronic format has been removed or altered without permission of the related right owner;
9. Producing, assembling, transforming, distributing, importing, exporting, selling or renting an item of an equipment when knowing or having basis to know that such equipment is used for illegal decoding a satellite signal carrying encrypted program;
10. Intentional recording or disseminating continuously of a satellite signal carrying encrypted program if the signal is decoded without permission of the lawful distributors.

### **Chapter III**

#### **COPYRIGHTS OWNERS AND RELATED RIGHTS OWNERS**

##### **Article 36. Copyrights Owner**

Copyrights owners are organizations, individuals that own part or whole of the property rights as stipulated in Article 20 of this Law.

##### **Article 37. Copyrights Owner is an author**

Author who creates his work by using his own time, finance and other physical and technical facilities shall have the rights as stipulated in Articles 19 and 20 of this Law.

##### **Article 38. Copyrights Owner is a co-author**

1. Co-author who co-creates a work by using his own time, finance and other material conditions shall have the personal rights as stipulated in Article 19 and property rights as stipulated in Article 20 of this Law.
2. Where the work created by co-authors mentioned in Paragraph 1 of this Article, consists of different parts, each of which can be used separately from others, the co-authors shall have the rights as stipulated in Articles 19 and 20 of this Law over such separate part.

##### **Article 39. Copyrights Owner is an organization, or individual that assigns a duty to or contract with an author.**

1. An organization that assigns a duty of creating a work to an author, who is its employee, shall be the owner of the rights as stipulated in Article 20 and Article 19.3 of this Law, except where otherwise agreed.
2. An organization, individual that contract with an author who creates a work, shall be the owner of

the rights as stipulated in Article 20 and paragraph 3 Article 19 of this Law, unless otherwise agreed.

#### **Article 40. Copyrights Owner is an heir**

An Organization, individual that is heir of copyright in accordance with law on inheritance shall be the owner of the rights as stipulated in Articles 20 and paragraph 3 Article 19 of this Law.

#### **Article 41. Copyrights Owner is a copyrights assignee**

An organization, individual that is an assignee of a part or whole of the rights as stipulated in Article 20 and paragraph 3 Article 19 of this Law as agreed in the contract shall be the copyrights owner.

#### **Article 42. Copyright owner is the State**

1. The following works shall be stated-owned works:
  - a) Posthumous works;
  - b) Works, which are being protected during their protection terms, of which the owners of property rights died without any heir(s), or with heir(s) who have waived, or has no, the right to such works.
  - c) Works of which owner rights are assigned to the State by the copyrights owner.
2. The Government shall provide specific provisions on the use of stated-owned works.

#### **Article 43. Works of public domain**

1. Works, of which the protection terms have expired as stipulated in Article 27 of this Law, is of public domain.
2. All organizations, individuals have the right to use works stipulated in paragraph 1 of this Article with the respect for personal rights of the authors as stipulated in Article 19 of this Law.
3. The Government shall provide specific provisions on the use of works of public domain.

#### **Article 44. Related right owners**

1. Organizations, individuals that use their own time, finance and other material facilities to make a performance shall be the owners of that performance, unless otherwise agreed with related party.
3. Organizations or individuals that that uses their own time, finance and other material facilities to make a phonogram shall be the owner of that phonogram, unless otherwise agreed with related party.
4. Broadcasting organization is the owner of its broadcasting program, unless otherwise agreed with related party.

### **Chapter IV**

#### **ASSIGNMENT OF COPYRIGHTS, RELATED RIGHTS**

##### **Section 1. Assignment of copyrights, related rights**

#### **Article 45. General provisions on Assignment of copyrights, related rights**

1. Assignment of copyrights, related rights is the assignment of owner rights stipulated in Articles 19.3, 20, 29.3, 30 and 31 of this Law by copyrights and related rights owners to other organizations, individuals under a contract or under relevant legislation.
2. Authors are not allowed to assign personal rights stipulated in Article 19, except the right to publication; performers are not allowed to assign personal rights stipulated in Article 29.2 of this Law.
3. Assignment of copyrights, related rights in respect of works, performances, phonograms,

broadcasting program created by co-owners must have the agreement of all co- owners. Where the mentioned works consist of different parts, each of which can be used separately from others, the copyrights, related rights owner shall have the right to assign his or her copyrights, related rights over his or her part to other organizations, individuals.

#### **Article 46. Contract for copyrights/related rights assignment.**

1. A contract for copyrights/related rights assignment must be made in writing and includes the following main contents:
  - a) Full name and address of assignor and assignee;
  - b) Grounds of assignment;
  - c) Price and mode of payment;
  - d) Rights and obligations of each party;
  - d') Obligations for breach of contract.
2. The implementation, amendment, termination and cancellation of assignment contract of copyrights, related rights shall apply regulations of the Civil Code.

#### **Section 2. Transference of the use of copyrights, related rights**

#### **Article 47. General provisions on transference of the use copyrights, related rights**

1. Transference of the use of copyrights, related rights means copyrights, related rights owners allow other individuals, organizations to use in a limited time part or whole of their exclusive rights stipulated in Articles 19.3, 20, 29.3, 30 and 31 of this Law.
2. Authors are not allowed to transfer the use of personal rights stipulated in Article 19, except the right to publication; performers are not allowed to transfer the use of personal rights stipulated in Article 29.2 of this Law.
3. Transference of the use of copyrights, related rights in respect of works, performances, phonograms, broadcasting program created by co-authors must have the agreement of all co-authors. Where the mentioned works consist of different parts, each of which can be used separately from others, the copyrights, related rights owner shall have the right to transfer his or her use of copyrights, related rights over his part to other organizations, individuals.
4. Organizations, individuals that are licensees of copyrights, related rights are, by the consent of copyrights, related rights owners, allowed to sublicense such rights to other organizations, individuals.

#### **Article 48. Contract for use of copyrights, related rights**

1. A contract for use of copyrights, related rights must be made in writing and comprise the following main contents:
  - a) Full name and address of assignor and assignee;
  - b) Grounds of assignment;
  - c) Scope of the assignment of the right;
  - d) Price and mode of payment;
  - d') Rights and obligations of each party;
  - e) Obligations for breach of contract
2. The implementation, amendment, termination and cancellation of assignment contract of copyrights, related rights shall apply regulations of the Civil Code.

## Chapter V

### REGISTRATION CERTIFICATION OF COPYRIGHTS AND RELATED RIGHTS

#### Article 49. Registration of copyrights and related rights

1. The registration of copyrights, related rights means an author or a copyrights, related rights owner files an application and attached documents (hereinafter jointly referred to as application) with the competent state authorities to attest the information of author, work, copyrights and related rights owner.
2. Filing application for copyrights/related rights registration certificate is not a mandatory procedure for the entitlement to the copyright and related in accordance with this Law.
3. Organizations, individuals granted a copyrights/related rights registration certificate shall not be obliged to prove their copyrights, related rights upon a dispute, except where an opposition proof is given.

#### Article 50. Application for registration of copyrights/related rights

1. Authors, owners of copyrights, related rights shall have the right to directly or authorize other persons or organizations to lodge an application for registration of such copyrights, related rights.
2. An application for registration of copyrights, related rights shall include the followings:
  - a) A declaration form for registration of the copyrights, related rights.

The form must be in Vietnamese and is signed by the author, copyrights, related rights owners or authorized person, and fully contains information about the applicant; information about the author, owner of the copyrights, related rights; a summary of the main contents of work, performance, phonogram or broadcasting program; name of author and the work used to make derivative works if the work is a derivative work; time, location, forms for publication; commitments and responsibilities relating to the information given in the application.

The Ministry of Culture and Information shall provide for the declaration form for registration of copyright and related rights.

- b) 02 copies of the work applied for copyrights registration or 02 copies of the fixation of the subject matter for related rights registration;
  - c) A power of attorney in case the applicant is an empowered person;
  - d) Documents evidencing the right to file an application if the applicant acquires that right from another person as a result of inheritance, transfer or assignment;
  - d') A document of agreement of all co-authors if the work has co-authors.
  - e) A document of agreement of all co-owners if the copyrights, related rights belong to joint ownership.
3. Those documents stipulated in paragraphs 2.c, d, dd and e of this Article must be in Vietnamese or must be translated into Vietnamese if they are made in foreign languages.

#### Article 51. Competent in granting Copyright Registration Certificates and Related Rights Registration Certificates

1. The State management authority in charge of copyrights and related rights shall have the competent authorities to issue the Copyright Registration Certificates, and Related Rights Registration Certificates.
2. The State management authority in charge of copyrights and related rights which have the power to issue Copyright Registration Certificates, and Related Rights Registration Certificates, shall also



have the power to reissue, replace or annul such certificate.

3. The Government shall make specific provisions for conditions, orders and procedures for issuing, replacing and annulment of Copyright Registration Certificates, and Related Rights Registration Certificates.
4. The Ministry of Culture and Information shall set out forms of Certificate of Registration for copyrights and related rights.

**Article 52. Time limit for issuing copyrights/related rights registration certificates**

Within 15 working days from the date of receipt of valid application, the State management authority in charge of copyrights and related rights shall be responsible for granting the Copyright Registration Certificate or Related Rights Registration Certificate to the relevant applicant. In case of refusing to grant the Copyright Registration Certificate or Related Rights Registration Certificate, this authority shall notify the applicant in writing.

**Article 53. Validity of copyrights/related rights registration certificate**

1. Copyright Registration Certificates or Related Rights Registration Certificates shall be effective in the whole territory of Vietnam.
2. Copyright Registration Certificates or Related Rights Registration Certificates issued by the State management authority in charge of copyrights and related rights before this Law comes into full force shall have its validity maintained.

**Article 54. Register and publication of copyrights, related rights**

1. Copyright Registration Certificates or Related Rights Registration Certificates shall be recorded in the National Register of Copyrights, Related rights.
2. Decision to issue, re-issue, change or to annul the validity of Copyright Registration Certificates or Related Rights Registration Certificates must be published in the Official Gazette in respect of Copyrights, Related rights.

**Article 55. Re-issue, replace or annulment of the validity of Copyright Registration Certificate, Related Rights Registration Certificate**

1. When a Copyright Registration Certificate, Related Rights Registration Certificate is lost, or damaged or if the copyright owner or related right owner is changed, the authority referred to in Article 51.2 of this Law shall reissue or replace such Copyright Registration Certificate, Related Rights Registration Certificate.
2. When an individual who is granted registration certificate of copyrights, related rights is not the author, the copyright or related right owner or it not a protected subject matter, the authority referred to in Article 51.2 of this Law shall annul the validity of such Copyright Registration Certificate, Related Rights Registration Certificate.
3. Any organization or individual who discovers that the grant of a Copyright Registration Certificate or Related Rights Registration Certificate is contrary to the provisions of this Law shall have the right to request the state management authority in charge of copyrights, related rights to cancel the validity of such certificate.

**Chapter VI**

**REPRESENTATIVE, CONSULTANCY AND SERVICE ORGANIZATIONS  
IN THE FIELDS OF COPYRIGHTS, RELATED RIGHTS**

**Article 56. Collective management organizations of copyrights and related rights**

1. Collective management organizations of copyrights and related rights are non-profit organizations established on the basis of agreement among authors, copyrights owners, related rights owners, operates in accordance with the law in order to protect copyrights and related rights.
2. Collective management organizations of copyrights and related rights shall carry out the following activities as authorized by authors, copyrights, related rights owners:
  - a) To manage copyrights and related rights; to negotiate on licensing, seizing and dividing royalties, remuneration and other material benefits there from the allowance of exploiting the authorized rights;
  - b) To protect member's rights and legal benefits, to reconcile any dispute.
3. Collective management organizations of copyrights and related rights have the rights and obligations as follows:
  - a) To establish encouraging creation activities and other social activities;
  - b) To cooperate with correlative international and national organizations on the protection of copyrights and related rights;
  - c) To make scheduled and unscheduled report on collective management to competent authorities;
  - d) Other rights and duties according to the provisions of the law.

**Article 57. Consultancy and service organizations of copyrights and related rights**

1. Consultancy and service organizations of copyrights and related rights are established and operated in accordance with the law
2. Consultancy and service organizations of copyrights and related rights shall carry out the following activities as requested by authors, copyrights owners, related right owners:
  - a) To do consultancy work of issues relating to the law on copyrights and related rights;
  - b) To carry out application procedures for registration of copyrights, related rights under the authorization on behalf of copyrights owners, related right owners;
  - c) To join other legal relations on copyrights, related rights, the protection of lawful rights of authors, copyrights owners and related rights owners under the authorization.

**PART THREE**

**INDUSTRIAL PROPERTY RIGHTS**

**Chapter VII**

**REQUIREMENTS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS**

**Section 1. Protection requirements for inventions**

**Article 58. General requirements for inventions eligible for protection**

1. An invention shall be eligible for protection by granting of an Invention Patent if it meets the following conditions:
  - a) To be novel;
  - b) To involve an inventive step;
  - c) To be susceptible of industrial application.
2. Unless it is common knowledge an invention shall be eligible for protection by granting of a Utility solution Patent if it meets the following conditions:
  - a) To be novel;
  - b) To be susceptible of industrial application.

### **Article 59. Subject matters not protected as inventions**

The following subject matters shall not be protected as inventions:

1. Discoveries, scientific theories; mathematical methods;
2. Schemes, plans, rules or methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;
3. Presentations of information;
4. Solutions of aesthetic characteristics only;
5. Plant varieties, animal varieties;
6. Processes of essentially biological nature for the production of plants and animals other than microbiological processes;
7. Disease prevention, diagnostic and treatment methods for human or animals.

### **Article 60. Novelty of inventions**

1. An invention shall be considered as novel if it is not publicly disclosed by use or means of a written or oral description or any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the invention registration application.
2. An invention shall be considered as not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.
3. An invention shall not be considered as lacking of novelty if it was published in the following circumstances, provided that the invention registration application is filed within 6 months from the date of publication:
  - a) It was published by another person without permission of the person having the right to registration as provided for in Article 86 of this Law;
  - b) It was published in the form of a scientific presentation by the person having the right to registration as provided for in Article 86 of this Law;
  - c) It was exhibited at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to registration as provided for in Article 86 of this Law.

### **Article 61. Inventive step of inventions**

An invention shall be considered to involve an inventive step, based on all technical solutions already disclosed by use or means of a written or oral description or any other form inside or outside the country, prior to the filing date or the priority date, as applicable, of the invention registration application, it constitutes an inventive progress and cannot be easily created by a person with ordinary skill in the art.

### **Article 62. Susceptibility of industrial application of inventions**

An invention shall be considered as susceptible of industrial application if it is possible to carry out massive production or manufacture of the product or repeated application of the process that is the subject matter of the invention and achieve stable results.

## **Section 2. Protection requirements for industrial designs**

### **Article 63. General requirements for industrial designs eligible for protection**

An industrial design shall be eligible for protection if it meets the following conditions:

1. To be new;

2. To be creative;
3. To be susceptible of industrial application.

#### **Article 64. Subject matters not protected as industrial designs**

The following subject matters shall not be protected as industrial designs:

1. Appearance of a product that is dictated by its technical features of the product;
2. Appearance of a civil or an industrial construction work;
3. Appearance of a product that is invisible during use of the product.

#### **Article 65. Novelty of industrial designs**

1. An industrial design shall be considered as new if it significantly differs from other industrial designs that are already disclosed by way of use or description in writing or in any other forms inside or outside the country prior to the filing date or the priority date, as applicable, of the industrial design registration application.
2. Two industrial designs shall not be considered as significantly different from each other if they are only different in features which are not easily noticeable and memorable and which cannot serve to distinguish these industrial designs as whole.
3. An industrial design shall be considered as not yet publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.
4. An industrial design shall not be considered as lacking of novelty if it was published in the following circumstances, provided that the industrial design registration application is filed within 6 months from the date of publication or exhibition:
  - a) It was published by another person without permission of the person having the right to registration as provided for in Article 86 of this Law;
  - b) It was published in the form of a scientific presentation by the person having the right to registration as provided for in Article 86 of this Law;
  - c) It was exhibited at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to registration as provided for in Article 86 of this Law.

#### **Article 66. Creativity of industrial designs**

An industrial design shall be considered as creative if, on the basis of an industrial design already publicly disclosed by use or means of a written or oral description or any other form inside or outside the country before the filing date or the priority date, as applicable, of the industrial design registration application, it cannot be easily created by a person with ordinary skill in the art.

#### **Article 67. Susceptibility of industrial application of industrial designs**

An industrial design shall be considered as susceptible of industrial application if it can serve as a model for mass production of the product with appearance embodying the industrial design by industrial or handicraft methods.

### **Section 3. Protection requirements for layout-designs**

#### **Article 68. General requirements for layout-designs eligible for protection**

A layout-design shall be eligible for protection if it meets the following conditions:

1. To be original;
2. To be commercially novel.

#### **Article 69. Subject matters not protected as layout-designs**

The following subject matters shall not be protected as layout-designs:

1. Principles, processes, systems or methods operated by semiconductor integrated circuits;
2. Information or software contained in semiconductor integrated circuits.

#### **Article 70. Originality of layout designs**

1. A layout-design shall be considered as original if it meets the following conditions:
  - a) To result from its author's own creative effort;
  - b) Not to be widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation.
2. A layout-design that consists of combination of elements and interconnections that are commonplace shall be considered to be original only if the combination, taken as the whole, is original as prescribed in paragraph 1 of this Article.

#### **Article 71. Commercial novelty of layout-designs**

1. A layout-design shall be considered as commercially novel if it has not been commercially exploited anywhere in the world prior to the filing date of the application for registration.
2. A layout-design shall not be considered as lacking of commercial novelty if the layout-design registration application is filed within 2 years from the date such layout-design was commercially exploited for the first time anywhere in the world by the person who has the right to registration provided for in Article 86 of this Law or his or her licensee.
3. Commercial exploitation of a layout-design means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by incorporation of the layout-design, or an article incorporating such a semiconductor integrated circuit.

### **Section 4. Protection requirements for marks**

#### **Article 72. General requirements for marks eligible for protection**

A mark shall be eligible for protection if it meets the following conditions:

1. To be a visible sign in the form of letters, words, pictures, figures, including three-dimensional figures or a combination thereof, represented in one or more colors;
2. To be capable of distinguishing goods or services of the mark owner from those of others.

#### **Article 73. Signs not protected as marks**

The following signs shall not be protected as marks:

1. Signs identical with or confusingly similar to the national flags, national emblems;
2. Signs identical with or confusingly similar to emblems, flags, armorial bearings, abbreviations, full names of State agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations or socio-professional organizations of Vietnam or international organizations, unless permitted by such agencies or organizations;
3. Signs identical with or confusingly similar to real names, alias, pen names or images of leaders, national heroes or famous persons of Vietnam or foreign countries;
4. Signs identical with or confusingly similar to certification seals, control seals, warranty seals of international organizations which require that their signs must not be used, except where such seals are registered as certification marks by those organizations;
5. Signs liable to mislead, confuse or deceive consumers as to the origin, functional parameters,

intended purposes, quality, value or other characteristics of the goods or services.

#### **Article 74. Distinctiveness of marks**

1. A mark shall be considered as distinctive if it consists of one or several easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and is not those signs provided for in paragraph 2 of this Article.
2. A mark shall not be considered as distinctive if it is signs falling under one of the following cases:
  - a) Simple devices and geometric figures; numerals, letters, or words of uncommon languages, except for signs having been widely used and recognized as a mark;
  - b) Signs, symbols, pictures or common names in any language of goods or services that have been widely and often used and are common knowledge;
  - c) Signs indicating the time, place, method of production, kind, quantity, quality, property, composition, intended purpose, value or other characteristics, which is descriptive of the goods or services, except for signs having acquired distinctiveness through use before the filing of mark registration applications;
  - d) Signs describing the legal status and activity field of businesses;
  - dd) Signs indicating the geographical origin of the goods or services, except for signs having been widely used and recognized as a mark or signs registered as collective marks or certification marks as provided for in this Law;
  - e) Signs not being integrated signs which are identical with or confusingly similar to a registered mark in respect of identical or similar goods or services on the basis of a registration application having earlier filing date or earlier priority date, as applicable including applications filed under international treaties to which the Socialist Republic of Vietnam is party;
  - g) Signs identical with or confusingly similar to another person's mark having been widely used and recognized in respect of the similar or identical goods/services as before the filing date or the date of priority, as the case may be;
  - h) Signs identical with or confusingly similar to another person's mark already registered in respect of identical or similar goods or services the Mark registration Certificate of which has been terminated for no more than 5 years, except where the ground for such termination is non-use of the mark as provided for in subparagraph d paragraph 1 Article 95 of this Law;
  - i) Signs identical with or confusingly similar to another registered person's mark recognized as well-known in respect of the goods or services that are identical with or similar to those bearing the well-known mark; or in respect of dissimilar goods/services if the use of such marks may prejudice the distinctiveness of the well-known mark or the registration of such signs is aimed at taking advantage of goodwill of the well-known mark;
  - k) Signs identical with or similar to another person's trade name having been used if the use of such signs is likely to cause confusion to consumers as to the source of goods or services;
  - l) Signs identical with or similar to a geographical indication being protected if the use of such signs is likely to cause mislead consumers as to the geographical origin of goods;
  - m) Signs identical with or containing geographical indications or being translated from the meaning or transcription of the geographical indication being protected with respect to wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical area bearing such geographical indication;

- n) Signs identical with or insignificantly different from another person's industrial design having been protected on the basis of an industrial design registration application with filing date or priority date earlier than those of the mark registration application.

#### **Article 75. Criteria for recognition of a well-known mark**

The following criteria shall be taken into account while considering well-known status of a mark:

1. The number of the related consumers who are aware of the mark through purchase or use of the goods or services bearing the mark or through advertising;
2. Territorial scope of circulation of the goods/services bearing the mark;
3. Turn-over of the sale or supply of the goods or services bearing the mark or the volume of the goods sold or the services supplied;
4. The period of continuous use of the mark;
5. Widespread goodwill of the goods/services bearing the mark;
6. Number of the countries granting protection to the mark;
7. Number of the countries recognizing the mark as well known;
8. Value of assignment, licensing price, or the value of investment capital contribution in respect of the mark.

#### **Section 5. Protection requirements for trade names**

#### **Article 76. General requirements for trade names eligible for protection**

A trade name shall be eligible for protection if it is capable of distinguishing the business entity bearing such trade name from other business entities acting in the same field and locality of business.

#### **Article 77. Subject matters not protected as trade names**

Designations of State agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations or those entities who are not engaged in business activities shall not be protected as trade names.

#### **Article 78. Distinctiveness of trade names**

A trade name shall be considered as distinctiveness if it meets the following conditions:

1. To consist of a proper name, except where it has been widely known as a result of use;
2. Not to be identical with or confusingly similar to a trade name having been used earlier by another person in the same field and locality of business;
3. Not to be identical with or confusingly similar to another's mark or a geographical indication having been protected before the date it is used.

#### **Section 6. Protection requirements for geographical indications**

#### **Article 79. General requirements for geographical indications eligible for protection**

A geographical indication shall be eligible for protection if it meets the following conditions:

1. The product having the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication.
2. The product having the geographical indication has reputation, quality or characteristics essentially attributable to the geographical conditions of the area, locality, territory or country corresponding to such geographical indication.

#### **Article 80. Subject matters not protected as geographical indications**

The following subject matters shall not be protected as geographical indications:

1. Designations, indications having become generic names of goods in Vietnam;
2. Geographical indications of a foreign country where it is not or no longer protected or no longer used;
3. Geographical indications identical with or similar to a mark having been protected if their use will cause confusion as to the origin of the products;
4. Geographical indications misleading consumers as to the true geographical origin of products bearing such geographical indications.

**Article 81. Reputation, quality and characteristics of products having geographical indications**

1. Reputation of the product having a geographical indication shall be determined on the basis of trust consumers have in the product through the extent of wideness to which it is known and selected by consumers.
2. Quality and characteristics of the product having a geographical indication shall be defined by one or several qualitative, quantitative or physical, chemical, microbiological perceptible norms which shall be testable by technical means or experts with appropriate testing methods.

**Article 82. Geographical conditions relevant to geographical indications**

1. Geographical conditions relevant to a geographical indication shall include natural and human factors attributable to the reputation, quality and characteristics of the product having the geographical indication.
2. Natural factors consist of those of climate, hydrograph, geology, terrain, ecological system and other natural conditions.
3. Human factors consist of skills and expertise of producers, and such traditional production process of the locality.

**Article 83. Geographical area corresponding to geographical indications**

The geographical area corresponding to a geographical indication shall be accurately determined by words and a map.

**Section 7. Protection requirements for business secrets**

**Article 84. General requirements for business secrets eligible for protection**

A business secret shall be eligible for protection if it meets the following requirements:

1. Neither to be common knowledge nor easily obtained;
2. To be capable, when being used in the business course, to render advantages to its holder over those who do not hold or use it;
3. To be kept secret by its owner with necessary measures so that it shall neither be disclosed nor easily accessible.

**Article 85. Subject matters not protected as business secrets**

The following confidential information shall not be protected as business secrets:

1. Personal status secrets
2. State management secrets.
3. Security and national defense secrets.
4. Other confidential secret information irrelevant to business.

**Chapter VIII**

**THE ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS TO INVENTIONS,**



## **INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS**

### **Section 1. Registration of inventions, industrial designs, layout designs, marks and geographical indications**

#### **Article 86. The right to registration of an invention, industrial design and layout-design**

1. The following organizations and individuals shall have the right to registration of an invention, industrial design and layout-design:
  - a) The authors who have created the invention, industrial design or layout design by his or her own efforts and expenses; or
  - b) The organizations or individuals who have invested funds and material facilities to the authors in the form of a job assignment or job hiring unless otherwise agreed by the parties and such agreements are not contrary to paragraph 2 of this Article.
2. The Government shall provide for the right to registration of inventions, industrial designs and layout-designs created by using funds and material and technical facilities from the State budget.
3. In case more than one organizations or individuals have jointly created or invested in the creation of an invention, industrial design or layout-design, those organizations or individuals shall all have the right to registration and such right shall only be exercised with their consensus.
4. A person who has the right to registration as provided in this Article may assign that right to other organizations or individuals in the form of a written contract, passing by inheritance in accordance with the law, even when a registration application has been filed.

#### **Article 87. Right to registration of a mark**

1. An organization or individual shall have the right to registration of a mark to be used for goods or services he or she produced or supplied.
2. An organization or individual legally engaged in the trade in a product produced by a third party shall have the right to registration of a mark to be used for the product, provided for the producer neither uses such a mark for the product nor objects to such registration.
3. A collective organization legally established shall have the right to registration of a collective mark to be used by its members in accordance with the rules on using collective mark.

With regard to a sign indicating the geographical origin of goods or services, the organization that has the right to registration shall be the collective of organizations or individuals engaged in the production or trade of goods or services in the relevant locality.

4. An organization with the function to control and certify the quality, characteristics, origin or other relevant criteria of goods or services shall have the right to registration of a certification mark provided that such organization is not engaged in the production or trade of such goods or services.
5. Two or more organizations or individuals shall have the right to jointly register a mark in order to become the co-owners thereof, provided that:
  - a) The use of such a mark shall be on behalf of all of the co-owners or shall be for the goods or services of which all of the co-owners are engaged in the production or trade;
  - b) The use of such a mark shall not cause any confusion to consumers as to the origin of goods or services.
6. A person who has the right to registration as provided for in paragraphs 1 to 5 of this Article, even after filing registration application, may assign, in writing, the right to other organizations or

individuals by way of a written contract for bequest or bylaw inheritance, provided that the assignee satisfies the respective criteria applicable to person having the right to registration.

7. With regard to a mark being protected in a member country of an international treaty which prohibits the representative or agent of a mark owner to register such mark and of which the Socialist Republic of Vietnam is also a member country, then such representative or agent shall not be permitted to register such mark unless it is so agreed by the mark owner, except where a legitimate reason is available.

#### **Article 88. Right to registration of geographical indications**

The right to register geographical indications of Vietnam belongs to the State.

The State allows organizations and individuals producing the product bearing the geographical indication, collective organizations representing such organizations and individuals or the administrative authorities of the locality to which the geographical indication pertains to exercise the right to register such geographical indication. The person who exercises the right to register a geographical indication shall not become the owner of such geographical indication.

#### **Article 89. Mode of filing registration applications for the establishment of industrial property rights**

1. Organizations, individuals of Vietnam, foreign individuals permanently residing in Vietnam and foreign organizations and individuals having a production or trading establishment in Vietnam shall file applications for registration of establishment of industrial property right either directly or through a lawful representative in Vietnam.
2. Foreign individuals not permanently residing in Vietnam, foreign organizations and individuals not having a production or trading establishment in Vietnam shall file applications for registration of establishment of industrial property right through a lawful representative in Vietnam.

#### **Article 90. The first-to-file principle**

1. Where two or more applications are filed by several people to register the same invention, or to register industrial designs identical with or insignificantly different from each other, or to register the marks identical with or confusingly similar to each other, in respect of identical or similar goods or services, the Protection Titles may only be granted with respect to the valid application with the earliest date of priority or filing date among the applications that satisfy all the conditions for the issue of a protection title.
2. Where two or more applications jointly meet all the conditions for the issue of a protection title and jointly have the earliest date of priority or filing date, a Protection Title may only be granted with respect to a single application out of those applications in accordance with the agreement of all applicants. Without such an agreement, all of those applications shall be refused for the grant of a protection title.

#### **Article 91. Principle of priority**

1. The applicant for registration of an invention, an industrial design or a mark may claim priority on the basis of the first application for protection of the same subject matter if the following conditions are fully satisfied:
  - a) The first application has been filed in Vietnam or a member country of an international treaty having provisions on priority rights to which the Socialist Republic of Vietnam is a party, or a country having agreed with Vietnam to apply such provisions;

- b) The applicant is a national of Vietnam or such a country referred to in subparagraph a of this paragraph, or is a resident of or has a business or production establishment in Vietnam or such a country referred to in subparagraph a of this paragraph;
  - c) The claim for the right of priority was clearly mentioned in the application and a copy of the first application certified by its receiving office;
  - d) The application has been filed within the time limit provided for in the international treaty to which Vietnam is party.
2. In a single invention, industrial design or mark application, the applicant may claim multiple priorities based on different earlier applications, provided that the corresponding contents of such earlier applications and the application are indicated.
  3. An industrial property registration application enjoying priority shall bear the priority date identical with the first filing date.

#### **Article 92. Protection Titles**

1. Protection Titles shall record the owners of inventions, industrial designs, layout-designs, marks (hereinafter referred to as Protection Title owners); the authors of inventions, industrial designs and layout-designs; the subject matter, scope and term of protection.
2. The Protection Title of a geographical indication shall record the management organization in respect to the geographical indication, the organizations and individuals having the right to use the geographical indication, the protected geographical indication, characteristics of the product bearing the geographical indication, characteristics of geographical conditions and the geographical area bearing such geographical indication.
3. Protections Titles include Invention Patent, Utility solution Patent, Industrial design Patent, Layout-design of semiconductor integrated circuit registration Certificate, Mark registration Certificate and Geographical indication registration Certificate.

#### **Article 93. Validity of the Protection Titles**

1. Protection Titles have effect throughout territory of Vietnam.
2. Invention Patents shall have validity beginning on the grant date and expiring at the end of 20 years as from the filing date.
3. Utility solution Patents shall have validity beginning on the grant date and expiring at the end of 10 years as from the filing date.
4. Industrial design Patents shall have validity beginning on the grant date and expiring at the end of 5 years as from the filing date and renewable for two consecutive terms of 5 years.
5. Layout-design of semiconductor integrated circuit registration Certificates shall have validity beginning on the grant date and expiring at the earliest date among the following:
  - a) The end of 10 years as from the filing date;
  - b) The end of 10 years as from the date the layout-designs were first commercially exploited anywhere in the world by the person having the right to registration or his or her licensee;
  - c) The end of 15 years as from the date of creation of the layout-designs.
6. Mark registration Certificates shall have the validity beginning on the granting date and expiring at the end of 10 years counted from the filing date and renewable indefinitely for consecutive terms of 10 years.
7. Geographical indication registration Certificates shall have indefinite validity beginning on the

grant date.

#### **Article 94. Maintenance and renewal of validity of Protection Titles**

1. In order to have validity of an Invention Patent or Utility Solution Patent maintained, its owner shall pay maintenance fees.
2. In order to have validity of an Industrial Design Patent or a Mark registration Certificate renewed, its owner shall pay renewal fees.
3. Rates of fees and procedures of maintenance and renewal of Protection Titles shall be provided for by the Government.

#### **Article 95. Termination of validity of Protection Titles**

1. The validity of a Protection Title shall be terminated in the following cases:
  - a) Its owner has not paid the due fees for the maintenance or renewal as prescribed;
  - b) Its owner has declared to relinquish the rights conferred by the Protection Title;
  - c) Its owner has no longer existed or the owner of a Mark registration Certificate has no longer engaged in business without a lawful successor;
  - d) The mark has not been used by its owner or his licensee without justifiable reasons for a term of 5 consecutive years prior to a request for termination of validity, except the use is commenced or resumed at least 3 months before the request for termination;
  - d') The owner of a Mark registration Certificate in respect of a collective mark fails to supervise or ineffectively supervises the implementation of the rules on using collective mark;
  - e) The owner of a Mark registration Certificate in respect of a certification mark violates the rules on using certification mark or fails to supervise or ineffectively supervises the implementation of such rules;
  - g) The geographical conditions attributable to the reputation, quality or characteristics of the product bearing a geographical indication have changed resulting in a loss of the reputation, quality or characteristics of the product.
2. Where the owner of a Protection Title fails to pay maintenance fees before the prescribed time limit, upon the expiry of such time limit, validity of the Protection Title shall ex-officio terminate from the first day of the year for which the annual fees have not been paid and the State administrative authority of industrial property rights shall record such termination in the National Register of Industrial Property and publish it in the Industrial Property Official Gazette.
3. Where the owner of a Protection Title has declared to relinquish industrial property rights as provided for in subparagraph b of paragraph 1 of this Article, the State administrative authority of industrial property shall decide to terminate the validity of the Protection Title from the date of receipt of the owner's declaration;
4. Any organizations or individuals shall have the right to request the State administrative authority of industrial property rights to terminate the validity of a Protection Title in cases provided for in subparagraphs c, d, dd e and g of paragraph 2 of this Article, provided that fees and charges shall be paid.

Based on the result of the examination of request for termination of validity of a Protection Title and interested parties' opinions, the State administrative authority of industrial property rights shall make either a decision or a notice of refusal to terminate the validity of the Protection Title.

5. Provisions in paragraphs 1, 3 and 4 of this Article shall also be applied to the termination of

validity of international registrations in respect of marks.

#### **Article 96. Invalidation of Protection Titles**

1. A Protection Title shall be entirely invalidated in the following cases:
  - a) The applicant for registration neither has right to registration nor has been assigned such right (with regard to inventions, industrial designs, layout-designs and marks);
  - b) The subject matter of industrial property failed to satisfy the protection conditions at the grant date of the Protection Title.
2. A Protection Title shall be partly invalidated if that part failed to satisfy the protection conditions.
3. Any organizations or individuals shall have the right to request the State administrative authority of industrial property rights to invalidate a Protection Title in cases provided for in paragraphs 1 and 2 of this Article, provided that fees shall be paid.

The time period for making request for invalidation of a Protection Title shall be its whole term of protection. With regard to marks, such time limit shall be 5 years as from the grant date, except for the case where the Protection Title has been granted due to the applicant's dishonesty.

4. Based on the result of the examination of request for invalidation of a Protection Title and interested parties' opinions, the State administrative authority of industrial property rights shall make either a decision or a notice of refusal to entirely or partly invalidate the Protection Title.
5. Provisions in paragraphs 1, 2, 3 and 4 of this Article shall also be applied to the invalidation of international registrations with regard to the marks.

#### **Article 97. Amendments to Protection Titles**

1. The owner of a Protection Title shall have the right to request the State administrative authority of industrial property rights to make amendments to the following information in the Protection Title, provided that the prescribed fees shall be paid:
  - a) Changes, error corrections in relation to the name, address of the author or the owner;
  - b) Amendments to the description of characteristics, quality or geographical area bearing a geographical indication; Amendments to the rules on using a collective mark or the rules on using a certification mark.
2. At the request the owner of a Protection Title, the State administrative authority of industrial property rights shall be responsible for correction of the error caused at its fault in the Protection Title. In such a case, the owner of a Protection Title is not liable for payment of fees.
3. The owner of a Protection Title shall have the right to request the State administrative authority of industrial property rights to narrow the scope of industrial property rights. In such a case, the respective industrial property registration application shall be reexamined as to substance and the person making such a request shall pay the fees for substantive examination.

#### **Article 98. National register for industrial property**

1. National register for industrial property is a document recording the establishment of, changes to, and transfers of industrial property rights to inventions, industrial designs, layout designs, marks and geographical indications under this Law.
2. Decisions on the grant of protection titles, main contents of protection titles and decisions on the amendments to, termination or invalidation of Protection Titles, decisions on registration of industrial property right transfer contracts shall all be recorded in the National register for industrial property.

3. National register for industrial property shall be set up and kept by the State administrative authority of industrial property rights.

#### **Article 99. Publication of decisions relating to Protection Titles**

Any decisions on the grant, amendment, termination, invalidation, transfer of Protection Titles for industrial property rights shall be published by the State administrative authority of industrial property rights in the Industrial property Official Gazette within 60 days as from the date of decision.

#### **Section 2. Industrial property registration applications**

#### **Article 100. General requirements for industrial property registration applications**

1. An industrial property registration application consists of the following documents:
  - a) A request, made in prescribed form;
  - b) Documents, samples, information identifying the industrial property object claimed for protection as provided for in Articles 102 through 106 of this Law;
  - c) Power of attorneys, if the application is filed through a representative;
  - d) Documents evidencing the right to registration, if acquired by the applicant from another person;
  - dd) Documents evidencing the priority right, if claimed;
  - e) Receipt of prescribed fees and charges.
2. Industrial property registration applications and communication documents between the applicants and the State administrative authority of industrial property rights shall be made in Vietnamese, except for the followings, which can be made in another language but shall be translated into Vietnamese at the request of the State administrative authority of industrial property rights:
  - a) Power of attorneys;
  - b) Documents evidencing the right to registration;
  - c) Documents evidencing the priority right;
  - d) Other documents supporting to the applications.
3. Documents evidencing the priority rights of an industrial property registration application shall include:
  - a) A copy of the first application(s) certified by the receiving office;
  - b) Deed of assignment of priority rights if acquired from another person.

#### **Article 101. Requirements as to the unity of industrial property registration applications**

1. Each industrial property registration application shall request for only one Protection Title in respect of a single industrial property object, except for the cases provided for in paragraphs 2, 3 and 4 of this Article.
2. Each registration application may request for one Invention Patent or a Utility Solution Patent in respect of a group of inventions that are closely linked to form a single common inventive idea.
3. Each registration application may request for one Industrial Design Patent in respect of several industrial designs in the following cases:
  - a) Industrial designs of a set of articles which contains several products expressing a single common inventive idea and that are used together or for a single purpose;
  - b) An industrial design accompanied by one or more other variants i.e. variations of the industrial design that express a single common inventive idea and that are not significantly different from

the industrial design.

4. Each registration application may request for one Mark registration Certificate in respect of one mark to be used for one or more different goods or services.

#### **Article 102. Requirements for invention registration applications**

1. Documents identifying the invention claimed for protection in an invention registration application shall include a Specification of the invention and an Abstract of invention consisting of a description of invention and a scope of protection of invention.
2. The Description of invention shall fulfill the following conditions:
  - a) To sufficiently and clearly disclose the nature of the invention to the extent that such invention may be carried out by a person having ordinary knowledge in the art;
  - b) To briefly explain the drawings, if it is required to further clarify the nature of the invention; and
  - c) To clarify the novelty, inventive step and susceptibility of industrial application of the invention.
3. The Scope of protection of invention shall be expressed in the form of a combination of those technical features necessary and sufficient to identify the scope of the rights to that invention, and must be in line with the Specification of invention and drawings.
4. The Abstract of invention shall disclose the essential features of the nature of the invention.

#### **Article 103. Requirements for industrial design registration applications**

1. Documents identifying an industrial design claimed for protection in an industrial design registration application shall contain a Specification of industrial design and a set of photos or drawings of industrial design. The Specification of industrial design consists of a description of industrial design and a scope of protection of industrial design.
2. The Description of industrial design shall fulfill the following conditions:
  - a) To fully disclose features that express the nature of the industrial design and specify features that are new, different from the least different known industrial design, and be consistent with the photos or drawings;
  - b) Where the industrial design registration application consists of variants, the description shall fully specify these variants and clearly define distinctions between the principal variant and the other variants;
  - c) Where the industrial design in the registration application is of a set of products, the description shall fully specify features of each product of the set.
3. The Scope of protection of industrial design shall specify features claimed for protection, including features that are new, different from similar known industrial designs.
4. The set of photos, drawings shall fully specify features of the industrial design.

#### **Article 104. Requirements for layout-design registration applications**

Documents, materials and information identifying the layout-design claimed for protection in a layout-design registration application shall include:

1. Drawings, photos of the layout-design;
2. Information on functions and structure of semiconductor integrated circuits produced by incorporation of the layout design;

3. Samples of a semiconductor integrated circuit produced by incorporation of that layout-design (where the layout design has been commercially exploited).

**Article 105. Requirements of mark registration applications**

1. Documents, samples, information identifying the mark claimed for protection in a mark registration application shall include:
  - a) Samples of the mark and list of goods or services bearing the mark;
  - b) Rules on using collective mark or Rules on using certification mark.
2. The sample of mark shall be described in order to clarify elements of the mark and the comprehensive meaning of the mark (if any); where the mark consists of words or phrases of hieroglyphic languages, they shall be transliterated; where the mark consists of words or phrases in foreign languages, they shall be translated into Vietnamese.
3. Goods or services listed in a mark registration application shall be classified in accordance with the Classification List under the Nice Agreement on International Classification of Goods and Services, published by the State administrative authority of industrial property rights.
4. The rule on using collective mark shall consist of the following essential contents:
  - a) Designation, address, grounds of establishment and operations of the collective organization that is the owner of the mark;
  - b) Conditions to become a member of the collective organization;
  - c) List of organizations and individuals permitted to use the mark.
  - d) Conditions for using the mark;
  - dd) Remedies applicable to acts violating the rules on using the collective mark;
5. The rules on using certification mark shall have the following essential contents:
  - a) The organization or individual who is the mark owner;
  - b) Conditions for using the mark;
  - c) Characteristics of goods and services certified by the mark;
  - d) Methods of evaluation of the characteristics of goods and services and methods of supervision of the use of the mark;
  - dd) Expenses payable by the mark user for the certification and protection of the mark, if any.

**Article 106. Requirements of geographical indication applications**

1. Documents, specimen and information identifying the geographical indication claimed for protection in a geographical indication application shall include:
  - a) The name or sign that is the geographical indication;
  - b) The product bearing the geographical indication;
  - c) Description of peculiar characteristics or quality, or reputation of the product bearing the geographical indication and characteristics of natural conditions attributing to the peculiar characteristics or quality, or reputation of the product (hereinafter referred to as the Descriptions of peculiar characteristics);
  - d) The map of the geographical area corresponding to the geographical indication;
  - d') Documents evidencing that the geographical indication is under protection in the country of origin if it has foreign origin;
2. The Descriptions of peculiar the characteristics shall have the following essential contents:



- a) Descriptions of the relevant product, including raw materials, and physical, chemical, microbiological and perceptive characteristics of the product;
- b) Methods of determination of the geographical area corresponding to the geographical indication;
- c) Evidence proving that the product originates from such geographical area, with the respective meaning provided for in Article 79 of this Law;
- d) Descriptions of the local and stable methods of the production and processing;
- dd) Information on the relationship between the peculiar characteristics or quality, or reputation of the product and the natural conditions as provided for in Article 79 of this Law;
- e) Information on the self-control mechanism of the peculiar characteristics or quality of the products.

**Article 107. Investment with authority of representation in industrial property right related procedures**

1. The investment with authority to carry out procedures in relation to the establishment, maintenance, extension, amendments, termination and invalidation of Protection Titles shall be made in written form, called as a power of attorney.
2. A power of attorney shall include the following essential contents:
  - a) Full name and address of the principal and the attorney;
  - b) Scope of authority;
  - c) Validity term of the power of attorney;
  - d) Date of the power of attorney;
  - dd) Signature and seal (if any) of the principal;
3. A power of attorney with no validity term shall be considered as valid indefinitely and shall be terminated only when the principal so declares.

**Section 3. Procedures for processing industrial property registration applications and granting Protection Titles**

**Article 108. Receiving industrial property registration applications; Filing date**

1. An industrial property registration application shall only be received by State administrative authority of industrial property rights if it consists of at least the following documents and information:
  - a) A request for registration of invention, industrial design, layout-design, mark or geographical indication which include adequate information to identify the applicant and a sample of mark, list of the goods or services bearing the mark for a mark registration application;
  - b) Specifications, including Scope of protection for invention registration applications, a set of photos or drawings for industrial design registration applications; Descriptions of the peculiar characteristics for geographical indication registration applications;
  - c) Receipt of prescribed fees and charges.
2. The filing date shall be the date on which the application is received by the State administrative authority of industrial property rights or the international filing date in case of applications filed under international treaties.

**Article 109. Formal examination of industrial property registration applications**

1. Industrial property registration applications shall be examined as to form in order to verify their formal validity.
2. An industrial property registration application shall not be regarded as being formally valid in the following circumstances:
  - a) The application does not fulfill the requirements of formality;
  - b) The subject matter of the application is not eligible for protection;
  - c) The applicant does not have the right to registration, including where the right belongs to more than one persons but one or several of them do not agree to execute the filing;
  - d) The application was filed in contrary to the mode of filing as provided for in Article 89 of this Law;
  - d') The applicant fails to pay the fees and charges.
3. With regard to an industrial property registration application falling under paragraph 2 of this Article, the State administrative authority of industrial property rights shall carry out the following procedures:
  - a) To serve a notice of an intended refusal to accept the application as formally valid, in which the reasons are clearly stated with a set time limit for the applicant to overcome defects or to object such intended refusal;
  - b) To serve a notice of the refusal to accept the application as formally valid if the applicant fails to overcome defects and fails to have justifiable objection to such intended refusal as provided for in subparagraph a of this paragraph;
  - c) To serve a notice of the refusal to grant a Layout-design of semiconductor integrated circuit registration Certificate in case of an integrated circuit registration application;
  - d) To carry out the procedures provided for in paragraph 4 of this Article if the applicant has successfully overcome defects or has justifiably objected the intended refusal as provided for in subparagraph a of this paragraph.
4. With regard to an industrial property registration application not falling under the cases provided for in paragraph 2 of this Article, or under subparagraph d of paragraph 3 of this Article, the State administrative authority of industrial property rights shall serve a notice of the acceptance of a formally valid application or, in case of a layout-design application, grant a Protection Title and acknowledge into the National register for Industrial Property as provided for in Article 118 of this Law.
5. A mark registration application refused under paragraph 3 of this Article shall be considered as never filed, except where it serves as the basis for a claim for right of priority.

**Article 110. Publication of industrial property registration applications**

1. An industrial property registration application which has been accepted as being valid by the State administrative authority of industrial property rights shall be published in the Industrial Property Official Gazette in accordance with the provisions of this Article.
2. An invention registration application shall be published in the 19th month as from the filing date or the priority date as applicable, or as earlier as requested by the applicant.
3. An industrial design registration application, a mark registration application or a geographical indication registration application shall be published within 2 months as from the date the application is accepted as formally valid.

4. A layout-design registration application shall be published by way of allowing direct access at the State administrative authority of industrial property rights provided that no reproduction is permissible; with regard to such confidential information contained in an application, such access shall be permitted only to authorities and parties related to the completion of procedures of invalidation of Protection Title or completion of procedures of dealing with infringements of right.

The basic information on a layout-design registration application and the Protection Title for a layout-design shall be published within 2 months as from the grant date of Protection Title.

**Article 111. Secret keeping of invention registration applications, industrial design registration applications before publication**

1. Until an invention registration application or an industrial design registration application is published in the Industrial Property Official Gazette, the State administrative authority of industrial property rights shall be responsible to keep it secret.
2. The staff member of the State administrative authority of industrial property rights who disclosed information of an invention registration application or an industrial design registration application shall be disciplined and shall pay compensation for any damage caused to the applicant by such disclosure in accordance with the law.

**Article 112. Third parties' opinions on the grant of Protection Titles**

As from the date an industrial property registration application is published the Industrial Property Official Gazette until prior to the date of decision on the grant of a Protection Title, any third party shall have the right to present opinions to the State administrative authority of industrial property rights in relation to the grant or refusal of a Protection Title in respect of the application. Such opinions must be given in written form and be accompanied by materials or must specify the source of information used for proving.

**Article 113. Request for substantive examination of invention registration applications**

1. Within 42 months as from the filing date or from the priority date, as applicable, the applicant or any third party may request the State administrative authority of industrial property rights to examine the application as to substance of the application, provided that substantive examination fees shall be paid.
2. The time limit for making request for substantive examination of an invention registration application with request for a Utility Solution Patent shall be 36 months as from the filing date or from the priority date, as applicable.
3. Where there was no request for substantive examination filed within the time limit provided for in paragraphs 1 and 2 of this Article, the respective invention registration application shall be regarded as being withdrawn at the expiration of that time limit

**Article 114. Substantive examination of industrial property registration applications**

1. The following industrial property registration applications shall be examined as to substance in order to evaluate eligibility for protection in respect of protection requirements of the subject matters claimed in the applications and to determine the respective scope of protection:
  - a) Invention registration applications accepted as formally valid of which a request for substantive examination has been filed as prescribed;
  - b) Industrial design registration applications, mark registration applications and geographical indication registration applications that are accepted as formally valid;

2. Layout-design registration applications shall not be examined as to substance.

**Article 115. Amendment, supplement, division and conversion of industrial property registration applications**

1. Until the State administrative authority of industrial property right makes a notice of refusal of or a decision on the grant of a Protection Title, the applicant shall have the following rights:
  - a) To make amendment or supplement to the application;
  - b) To divide the application;
  - c) To request for recording changes in name or address of the applicant;
  - d) To request for recording changes in the applicant as a result of assignment under the contract, as a result of inheritance, bequest, or under a decision of an authority;
  - d') To convert an invention registration application with request for an Invention Patent into an invention registration application with request for a Utility Solution Patent and vice versa.
2. The person who requests for the procedures provided for in paragraph 1 of this Article shall pay fees and charges.
3. Any amendment or supplement to an industrial property registration application must not expand the scope of the subject matter disclosed or specified in the application and must not change the substance of the subject matter claimed for registration in the application and shall ensure the unity of the application.
4. In case of division of an application, the filing date of the divided application shall be determined as that of the original application.

**Article 116. Withdrawal of industrial property registration applications**

1. Until the State administrative authority of industrial property rights makes a notice of refusal of or a decision on the grant of a Protection Title, the applicant shall have the right to declare the withdrawal of the industrial property registration application in written form in his or her own name or through an industrial property representative agency provided that the investment of authority for withdrawal of the application is expressly stated in the power of attorney.
2. At the moment an applicant state the withdrawal of the registration application, all further procedures related to the application shall be suspended; fees and charges which already paid in relation to the procedures that have not been yet commenced shall be refunded to the applicant at his or her request.
3. Any registration application for an invention or an industrial design which has been withdrawn or is considered as withdrawn before publication and any mark registration application which has been withdrawn shall be considered as never filed, except where it serves as the basis for a claim for right of priority.

**Article 117. Refusal to grant Protection Titles**

1. The grant of a Protection Title shall be refused in respect of an application for an invention, an industrial design, a mark or a geographical indication in the following cases:
  - a) There are grounds to confirm that the respective subject matter claimed in the application does not fulfill the protection requirements;
  - b) The application satisfies all the conditions for the issue of a protection title but is not the application with the earliest filing date or priority date as in the case referred to in Article 90.1 of this Law.

- c) The application falls within the cases referred to in Article 90.1 of this Law but a consensus of all the applicants is not reached.
2. The grant of a Protection Title shall be refused in respect of a layout-design registration application that does not fulfill the formality requirements as provided for in Article 109 of this Law.
3. Where an industrial property registration application falls under paragraphs 1 and 2 of this Article, the State administrative authority of industrial property rights shall carry out the following procedures:
  - a) To serve a notice of an intended refusal to grant a Protection Title, in which the reasons are clearly stated with a set time limit for the applicant to oppose to such intended refusal;
  - b) To serve a notice of the refusal to grant a Protection Title if the applicant has no objection or has unjustifiable objection to such intended refusal provided for in subparagraph a of this paragraph;
  - c) To grant a Protection Title and acknowledge it into the National Register for Industrial Property in accordance with provisions of Article 118 of this Law if the applicant has justifiable objection to such intended refusal provided for in subparagraph a of this paragraph.
4. Where there is a protest made against the intention to grant a protection title, the relevant industrial property registration application shall be re-examined with regard to the matters being protested against.

#### **Article 118. Grant of Protection Titles; Entry into Register**

Where an industrial property registration application does not fall under paragraphs 1 and 2 or and subparagraph b of paragraph 3 of Article 117 of this Law and the applicant has paid fees, the State administrative authority of industrial property rights shall decide to grant a protection tile and acknowledge it in the National Register for Industrial Property.

#### **Article 119. Time limit for processing industrial property registration applications**

1. An industrial property registration application shall be examined as to form within 1 month from the filing date.
2. An industrial property registration application shall be examined as to substance within the following time limits:
  - a) 12 months for an invention registration application from the date of publication of the application if a request for substantive examination of application is made before the date of publication or from the date of request for substantive examination of the application if such request is made after the date of publication;
  - b) 6 months from the date of publication of the application as far as industrial designs, marks and geographical indications are concerned.
3. The time limit for re-examination of industrial property registration applications shall be equal to two thirds of, and in complicated cases extendable up to, the time limit for initial examination.
4. The time allowed for amendment or supplement of applications shall not be counted in the time limits referred to in paragraphs 1, 2 and 3 of this Article.

#### **Section 4. International applications and the processing thereof**

#### **Article 120. International applications and the processing thereof**

1. Industrial property registration applications filed under international treaties to which the Socialist Republic of Vietnam is party shall be generally referred to as international applications.

2. International applications and the processing thereof shall comply with the relevant international treaty.
3. The Government shall provide for guidelines on the implementation of provisions on international applications, orders and procedures for the processing thereof pursuant to the principles stipulated in this Chapter.

## **Chapter IX**

### **OWNERS, SCOPE AND LIMITATIONS OF INDUSTRIAL PROPERTY RIGHTS**

#### **Section 1. Owners and scope of industrial property rights**

##### **Article 121. Owners of industrial property objects**

1. The owner of an invention, industrial design or layout design shall be the organization or individual that is the grantee of a Protection Title of the relevant industrial property object by the competent authority.

The owner of a mark shall be the organization or individual that is granted by the competent authority a Protection Title of such mark or that has an internationally registered mark as recognized by the competent agency or that has a well-known mark.

2. The owner of a trade name shall be the organization or individual that legally uses it in the course of business.
3. The owner of a business secret shall be the organizations or individuals that has legally acquired the business secret and keep it secret. A business secret acquired by an employee or a party carrying out the assigned duty during performance of assigned duties shall belong to the employer or the duty assignor, unless otherwise agreed by the parties.
4. The owner of Vietnam's geographical indications is the State.

The State grants the right to use geographical indications to the organizations or individuals producing the products bearing geographical indication in a relevant locality and putting those products out to the market. The State shall directly exercise the right to manage geographical indications or shall grant that right to the organization acting as the representative of all other organizations or individuals granted with the right to use geographical indications.

##### **Article 122. Authors of inventions, industrial designs and layout designs and their rights**

1. The author of an invention, industrial design or layout design shall be the person who has directly created the industrial property object. Where more than one person together have directly created the industrial property object they shall be co-owners.
2. Personal rights of the author of an invention, industrial design or layout design comprise of the following:
  - a) To be named as the author in the relevant Invention Patent, Utility Solution Patent, Industrial design Patent or Layout design registration Certificate;
  - b) To be named as the author in the documents in which the invention, industrial design or layout design is published or introduced.
3. Property right of the author of an invention, industrial design or layout design is the right to remuneration in accordance with Article 135 of this Law.

##### **Article 123. Rights of owners of industrial property objects**

1. The owner of an industrial property object shall have the following property rights:
  - a. To use or permit others to use the industrial property object in accordance with Article 124 and

Chapter X of this Law;

- b. To prohibit others from using the industrial property object in accordance with Article 125 of this Law;
  - c. To dispose off the industrial property object in accordance with Chapter X of this Law;
2. An organization or individual who is granted by the State the right to use or manage geographical indications in accordance with Article 121.4 of this Law shall have the following rights:
- a. An organization which is granted the right to manage geographical indications shall have the right to allow another person to use such geographical indications in accordance with clause 1(a) of this Article.
  - b. An organization or individual who is granted by the State the right to use or an organization that is granted the right to manage geographical indications shall have the right to prohibit other persons from using such geographical indications in accordance with clause 1(b) of this Article.

#### **Article 124. Use of industrial property objects**

1. The use of an invention means the conduct of the following acts:
  - a) Manufacturing the protected product;
  - b) Applying the protected process;
  - c) Exploiting the uses of the protected product or a product obtained by the protected process;
  - d) Circulating, or advertising, offering, stocking for circulating the product provided for in subparagraph c of this paragraph;
  - dd) Importing such product as provided for in subparagraph c of this paragraph.
2. The use of an industrial design means the conduct of the following acts:
  - a) Manufacturing products with appearance embodying the protected industrial design;
  - b) Putting into circulation, or advertising, offering and storing for circulation of such products as provided for in subparagraph a of this paragraph;
  - c) Importing such product as provided for in subparagraph a of this paragraph;
3. The use of a layout design means the conduct of the following acts:
  - a) Reproducing the layout-design or manufacturing a semi-conductor integrated circuit by incorporation of the protected layout-design;
  - b) Selling, leasing, advertising, offering or storing a copy of the protected layout-design, a semi-conductor integrated circuit manufactured by incorporation of the protected layout-design or an article incorporating such a semi-conductor integrated circuit;
  - c) Importing a copy of the protected layout-design, a semi-conductor integrated circuit manufactured by incorporation of the protected layout-design or an article incorporating such a semi-conductor integrated circuit.
4. The use of a business secret means the conduct of the following acts:
  - a) Applying the business secret to manufacture products, supply services or trade in goods;
  - b) Selling, advertising for sale, storing for sale and importing a product obtained by applying the business secret.
5. The use of a mark means the conduct of the following acts:
  - a) Affixing the protected mark to goods, packages of goods, means of business or supplying

- services and communicating papers in business activities;
  - b) Circulating, or offering, advertising, storing for sale of, goods bearing the protected mark;
  - c) Importing goods or services bearing the protected mark.
6. The use of a trade name means the conduct of any acts for commercial purposes by using it to name oneself in business activities, expressing it in transaction documents, shop-signs, products, goods, and packages of goods and means of service and advertisements.
7. The use of a geographical indication means the conduct of the following acts:
- a) Affixing the protected geographical indication to goods or packages of goods, means of business and transaction documents during business activities;
  - b) Circulating, or offering, advertising, storing for sale of, goods bearing the protected geographical indication;
  - c) Importing goods bearing the protected geographical indication.

**Article 125. Right to prevent others from using industrial property objects**

1. The owner of an industrial property subject matter and the organization or individual granted the right to use or manage geographical indication shall have the right to prevent others from using the respective industrial property subject matter unless such use falls under cases provided for in paragraph 2 or 3 of this Article.
2. The owner of an industrial property object and the organization or individual granted the right to use or manage geographical indication shall not have the right to prevent others from conducting the following acts:
  - a) Using the invention, industrial design or layout design for personal needs or non-commercial purposes, or for evaluations, analysis, research or teaching, testing, pilot production or for developing information to carry out procedures for license of production, importation or marketing of products;
  - b) Circulating, importing, exploiting uses of, the products having been legally put into the marketplace, including foreign markets, except for such products put into foreign markets by persons other than the mark owner or his licensee;
  - c) Using the invention or industrial design only for the purpose of maintaining the operation of a foreign vehicle in transit or only temporarily being in the territory of Vietnam;
  - d) Using the invention, industrial design or layout design by the person with prior user right in accordance with Article 134 of this Law;
  - dd) Using the invention by the person authorized by the state authority in accordance with Articles 145 and 146 of this Law;
  - e) Using the layout design when not knowing having no obligation to know the fact that it has been protected.
  - g) Using a mark identical with or similar to a protected geographical indication if such mark has acquired the protection in a truthful manner before the date of filing of a registration application for such geographical indication.
  - h) Using in a truthful manner the name, descriptive symbols of the type, quantity, quality, utility, value, geographical origin and other specifications of goods and services.
3. The owner of a business secret shall not have the right to prevent others from conducting the following acts:



- a) Disclosing or using the business secret acquired without knowing or without obligation to know that it has been illegally acquired by others;
- b) Disclosing the business secret in order to protect the public in accordance with the provisions of Article 128.1 of this Law.
- c) Using secret data in accordance with Article 128 of this Law for non-commercial purposes;
- d) Disclosing or using the business secret created independently by others;
- e) Disclosing or using business secrets resulted from analyzing or evaluating legally distributed a product, unless otherwise agreed between the analyzers or evaluators and the owner of the business secret or the sellers or such product.

**Article 126. Acts of infringement of rights to inventions, industrial designs and layout designs**

The following acts shall be regarded as an infringement of the rights of the owner of an invention, industrial design or layout design:

- 1. Using the protected invention, using the protected industrial design or another industrial design insufficiently different from it, or using the protected layout design or any original part of it, within the validity term of the Protection Title without permission of the owner;
- 2. Using the invention, industrial design or layout design without paying compensation in accordance with the provisions on provisional right as provided for in Article 131 of this Law.

**Article 127. Acts of infringing the rights to business secrets**

- 1. The following acts shall be considered as an infringement of the rights to a business secret:
  - a) Accessing or acquiring information embodied in a business secret by taking acts against secret-keeping measures taken by the lawful controller of the business secret;
  - b) Disclosing or using information embodied in a business secret without permission of the owner the business secret;
  - c) Breaching secret-keeping contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of persons in charge of secret-keeping in order to access, acquire or disclose a business secret;
  - d) Accessing to or acquiring information embodied in a business secret, that is submitted by another person under procedures for granting a license of business or marketing in respect of a product, by actions against secret-keeping measures taken by competent agencies;
  - dd) Using or disclosing business secret, while knowing or being obliged to know that it has been acquired by another person engaged in one of the acts referred to in subparagraphs a, b, c and d of this paragraph;
  - e) Failure to perform the obligation of secret keeping provided for in Article 128 of this Law.
- 2. The lawful controller of a business secret referred to in paragraph 1 of this Article shall include the owner, his or her lawful licensee or manager of the business secret.

**Article 128. Obligation to keep secrecy of the test data**

- 1. Where the laws require an applicant for a license of business or marketing in respect of pharmaceutical products or agricultural chemical products to submit test data or any other data being business secrets, the origination of which involves a considerable efforts or expenses, and where the applicant requests that such data to be kept secret, the authority shall have obligation to take necessary measures so that such data are neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.

2. From the submission of the secret data in an application to the authority as provided for in paragraph 1 of this Article to the end of 5-year period as from the date on which a license is granted to the applicant, the authority shall not grant such a license to any subsequent applicant in whose application the secret data are used without permission of the person who submitted such data, except in the cases referred to in Article 125.3(d) of this Law.

**Article 129. Acts of infringing the rights to marks, trade names and geographical indications**

1. The following acts if performed without permission of the mark owner shall be considered as infringement of the rights to the mark:
  - a. Using signs identical with a protected mark for goods or services identical with those in the list registered with the mark;
  - b. Using signs identical with a protected mark for goods or services similar or related to those in the list registered with the mark if such use is likely to cause confusion as to the origin of the goods or services;
  - c. Using signs similar to a protected mark for the goods or services identical with, similar or related to those in the list registered with the mark, if such use is likely to cause confusion as to the origin of the goods or services;
  - d. Using signs identical with or similar to a well-known mark, or signs in the form of translation or transliteration of a well-known mark, for any goods or services, including those dissimilar or unrelated to the good or service having the well-known mark, if such use is likely to cause confusion as to the origin of the goods or services or wrong impression as to the relationship between the user of such signs and the well-known mark owner.
2. Any act of using commercial indications identical with or similar to another person's trade name having been used before for the same or similar goods or services that causes confusion as to business entities, business premises or business activities under the trade name shall be considered as infringement of the rights to the trade name.
3. The following acts shall be considered as infringement of the rights to a protected geographical indication:
  - a. Using the protected geographical indication for products that do not satisfy the peculiar characteristics and quality of the product having the geographical indication although such products originate from a geographical area bearing such geographical indication;
  - b. Using the protected geographical indication for products similar to the product having the geographical indication for the purposes of taking advantage of its the reputation and goodwill;
  - c. Using a sign identical with or similar to the protected geographical indication for products not originating from the geographical area bearing the geographical indication and therefore causing consumers mislead about the products originating from that geographical area;
  - d. Using a protected geographical indications of wines or spirits for the wines or spirits that are not originating in the territories corresponding to the geographical indication, even where the true origin of goods is indicated or the geographical indication is used in translation or transcription or accompanied by such words as "kind", "type", "style", "imitation" or the like.

**Article 130. Acts of unfair competition**

1. The following acts shall be acts of unfair competition:
  - a) Using commercial indications that cause confusion as to business entities or business activities

or commercial source of goods or services;

- b) Using commercial indications that cause confusion as to the origin, production method, feature, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods and services;
  - c) Using a mark being protected in a country which is party to an international treaty to which the Socialist Republic of Vietnam is a party under which provisions, the representative or agent of the mark owner is prohibited from using the mark, if the user was a representative or agent of the mark owner and such use was neither consented to by the mark owner nor justified;
  - d) Registering or possessing the right to use or using a domain name identical with or confusingly similar to a protected trade name or mark of another person, or a geographical indication that one does not have the right to use, for the purpose of possessing the domain name, benefiting from or prejudicing reputation and goodwill of the respective mark, trade name and geographical indication.
2. The commercial indications referred to in paragraph 1 of this Article mean signs, information serving as guidelines to trade of goods and services, including marks, trade names, business symbols, business slogans, geographical indications, package designs, label designs, etc.
  3. Use of commercial indications referred to in paragraph 1 of this Article shall include any act of affixing such commercial indications on goods, packaging, service means, business transaction documents and advertising means; selling, advertising for sale, storing for sale and importing goods affixed with such commercial indications.

#### **Article 131. Provisional rights to inventions, industrial designs and layout designs**

1. Where an applicant for registration of an invention or industrial design knows that the invention or industrial design is being used by another person for commercial purposes without prior use right, the applicant shall have the right to serve a written notice of his or her application filing which specifies the filing date and the date of publication of the application in the Industrial Property Official Gazette to such user so that the later shall terminate or continue such use.
2. With respect to a layout-design which has, before the grant date of Layout-design of semiconductor integrated circuit registration Certificate, been commercially exploited by the person having the right to registration or his licensee, in case the person having the right to registration knows that such layout-design is being used by another person for commercial purposes, he or she may serve a written notice of his or her right to registration to such user so that the later shall terminate or continue such use.
3. In case the person having been notified as provided for in paragraphs 1 and 2 keeps using such invention, industrial design or layout design, if an Invention Patent, a Utility solution Patent, an Industrial Design Patent or a Layout-design of semiconductor integrated circuit registration Certificate is issued, the owner of such invention, industrial design or layout design shall have the right to request such user of the invention, industrial design or layout design to pay a remuneration equivalent to the fee for licensing such invention, industrial design or layout design within the relevant scope and period of use.

#### **Section 2. Limitations to industrial property rights**

#### **Article 132. Factors limiting industrial property rights**

Under this Law, industrial property rights may be limited by the following factors:

1. Rights of prior users to the invention or industrial design.

2. Obligations of the owners including:
  - a) To pay remuneration to the authors of inventions, industrial designs or layout designs;
  - b) To use the inventions or marks; and
3. To transfer the right to use inventions under decisions of State authorities.

**Article 133. Rights to use inventions on behalf of the state**

1. Ministries and ministerial-level authorities shall have the right to, on behalf of the State, use or allow other organizations or individuals to use inventions in the field under their respective management for public non-commercial purposes, national defense, security, disease prevention, treatment and nutrition for people and to meet other urgent social needs without having to obtain permission of the invention owner or his licensee under an exclusive contract (to be referred to as **holder of exclusive right to use invention** ) in accordance with Articles 145 and 146 of this Law.
2. The use of an invention under paragraph 1 of this Article shall be limited to the scope and conditions of licensing provided for in paragraph 1 of Article 146 of this Law, except for inventions created by using money and material and technical facilities from the State funds.

**Article 134. Prior use right to inventions and industrial designs**

1. In case any person who has, before the publication date of a registration application for an invention or industrial design, used or made necessary preparation for use of an invention or industrial design identical with the protected invention or industrial design stated in the registration application but create independently (hereinafter referred to as prior use right holder), then after a Protection Title is granted such person shall be, without having to obtain permission of or paying compensation to the owner of the protected invention or industrial design, entitled to continue such use within the same scope and volume of use or preparation made before the publication date. Such exercise of the right of the prior use right holder of invention or industrial design shall not be regarded as an infringement of the right of the invention or industrial design owner.
2. The holder of prior use right to an invention or industrial design shall not be entitled to transfer such right to others, except where such right is transferred together with the business or production premise where such the use or preparation for use of the invention or industrial design was made. The hold of prior use right cannot expand the scope and volume of use unless it is so permitted by the owner of the invention or industrial design.

**Article 135. Obligation to pay remuneration to authors of inventions, industrial designs and layout designs**

1. The owner shall have the obligation to pay remuneration to the author in accordance with paragraphs 2 and 3 of this Article, except where otherwise agreed by the parties.
2. The minimum rate of remuneration payable by the owner to the author shall be as provided for below:
  - a) 10% of the revenue gained by the owner from the use of the invention or industrial design or layout design;
  - b) 15% of the total amount of money received by the owner on each payment upon the granting of a license of the invention or industrial design or layout design.
3. Where an invention, industrial design or layout design is created by more than one author, the remuneration rate provided for in paragraph 2 of this Article shall be applicable to all authors together. The authors shall settle by themselves the allocation of such remuneration paid by the

owner.

4. The obligation to pay remuneration to the author of an invention, industrial design or layout design shall last for the whole term of protection of such invention, industrial design or layout design.

**Article 136. Obligation to use inventions and marks**

1. The owner of an invention shall be obliged to manufacture the protected product or to apply the protected process to satisfy the needs of national defense, security, disease prevention, treatment and nutrition for people or to meet other social urgent needs. If the owner of an invention fails to perform such obligation when there arise any of the above mentioned needs, the State authority may grant licenses of the invention to others as provided for in Articles 145 and 146 of this Law.
2. The owner of a mark shall be obliged to use it continuously. The validity of ownership right of a mark shall be terminated if it has not been used for a continuous period of more than 5 years in accordance with Article 95 of this Law.

**Article 137. Obligations to permit the use of main inventions for the purpose of using dependent inventions**

1. A dependent invention means an invention that is created on the basis of another invention (hereinafter called the principle invention) and can only be used on condition of using the principle invention.
2. Having proved that an independent invention creates an important technical advance as compared to the principle invention or has a considerable economic significance, the owner of the dependent invention may request the owner of the principle invention to grant a license of the principle invention subject to reasonably commercial price and conditions.

In case the owner of a principle invention fails to meet the requirements of the owner of the independent invention, without justifiable reasons, to perform such obligation provided for in this paragraph, the State competent authority may, without his or her permission, grant to the owner of the dependent invention a license of the principle invention as provided for in Articles 145 and 146 of this Law.

## **Chapter X**

### **TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

#### **Section 1. Assignment of industrial property rights**

**Article 138. General provisions on assignment of industrial property rights**

1. Assignment of an industrial property right means the transfer of ownership right by the industrial property owner to another organization or individual.
2. The assignment of an industrial property right shall be conducted in the form of written contract (hereinafter referred to as contract for assignment of industrial property right).

**Article 139. Restrictions to assignment of industrial property rights**

1. An industrial property right owner shall only assign his or her right within the scope of protection.
2. The rights to a geographical indication shall not be assigned.
3. The rights to a trade name shall only be assigned together with the transfer of the entire business premise and business activities under the trade name.
4. The assignment of the rights to a mark shall not cause confusion as to characteristics or origin of the goods or services having the mark.
5. The rights to a mark shall only be assigned to the organizations or individuals who fulfill

requirements for the person having the right to registration in respect of that mark.

#### **Article 140. Contents of contracts for assignment of industrial property rights**

A contract for assignment of industrial property right shall have the following substantial provisions:

1. Full name and address of the assignor and the assignee;
2. Bases of assignment;
3. Price for assignment;
4. Rights and obligations of the assignor and the assignee.

### **Section 2. Licensing of industrial property objects**

#### **Article 141. General provisions on licensing of industrial property objects**

1. Licensing of an industrial property object means the permission of the industrial property owner given to another organization or individual to use the industrial property object within the scope of the owner's use right.
2. The licensing of an industrial property object shall be conducted in the form of written contract (hereinafter referred to as license contract for use of industrial property object).

#### **Article 142. Restrictions to licensing of industrial property objects**

1. The right to use a geographical indication or a trade name shall not be licensed.
2. The right to use of a collective mark shall not be licensed to organizations or individuals other than members of the collective mark owner.
3. The licensee shall not enter into a sub-license contract with a third party without permission of the licensor.
4. A mark licensee shall have the obligation to indicate on goods and packaging thereof that the goods have been produced under a contract for use of mark.
5. An invention licensee under an exclusive contract shall have the obligation to use such invention in the same manner as the invention owner in accordance with Article 136.1 of this Law.

#### **Article 143. Types of contracts for use of industrial property objects**

License contracts for use of industrial property object may be of the following types:

1. Exclusive license contract means a contract under which, within scope and term of license, the licensee has an exclusive right to use the industrial property object while the licensor can neither conclude any license contracts for use of industrial property object with any third party nor, without permission of the licensee, use the industrial property object;
2. Non-exclusive license contract means a contract under which, within scope and term of licensing, the licensor still has the rights both to use the industrial property object and also to conclude non-exclusive contracts with others.
3. Sub-license contract for use of an industrial property object means a contract the licensor of which is a licensee of the industrial property object under another contract.

#### **Article 144. Contents of license contracts for use of industrial property objects**

1. A license contract for use of industrial property object shall have the following substantial provisions:
  - a) Full name and address of the licensor and the licensee;
  - b) Bases of the license;
  - c) Type of the contract;

- d) Scope of the license (limitations to use; territorial limitations);
  - dd) Term of license;
  - e) Price for the license;
  - g) Rights and obligations of the licensor and the licensee.
2. A license contract for use of industrial property object shall not have such provisions that unreasonably restricts the right of the licensee, particularly those provisions not deriving from the rights of the licensor as follows:
- a) Prohibiting the licensee to improve the industrial property object other than marks; compelling the licensee to grant a free license or to assign to the licensor the right to industrial property registration or an industrial property right in respect of such improvements;
  - b) Directly or indirectly restricting the licensee to export goods produced or services supplied under the license contract for use of industrial property object to the territories where the licensor neither hold the respective industrial property right nor has the exclusive right to import such goods;
  - c) Compelling the licensee to buy all or a given percentage of materials, components or equipments from the licensor or the persons designated by the licensor without aiming at ensuring the quality of goods produced or services supplied under the licensee;
  - d) Prohibiting the licensee from contesting validity of the industrial property right or the right to license.
3. Any terms in the contract as referred to in the cases of clause 2 of this Article shall be invalid ex-officio.

### **Section 3. Compulsory licensing of inventions**

#### **Article 145. Bases of compulsory licensing of inventions**

1. In the following cases, the right to use an invention shall be transferred to another organization or individual to use by a decision of a state competent authority as provided for in Article 147.1 of this Law without having to obtain permission from the holder of exclusive right to use such invention:
- a) Where such use of the invention is for public non-commercial purposes such as for meeting needs of national defense, security, people's healthcare and nutrition or other urgent needs of the society.
  - b) Where the holder of exclusive right to use invention fails to fulfill the obligation of using such invention provided for in paragraph 1 Article 136 and paragraph 5 Article 142 of this Law upon the expiration of a 4-year period as from the date of filing of a registration application for such invention and expiration of a 3-year period as from the date of issue of an invention patent;
  - c) Where the person who wants to use the invention fails, in spite of efforts made after a reasonable time for negotiation on adequate price and commercial considerations, to reach an agreement with the holder of exclusive right to use invention upon the conclusion of a license contract for use of invention;
  - d) Where the holder of exclusive right to use invention is determined to perform an act of anti-competition prohibited under the competition legislation;
2. The holder of exclusive right to use invention has the right to request for termination of such right of use when the bases of compulsory licensing provided for in clause 1 of this Article cease to exist

and are unlikely to recur, provided that such termination shall not be prejudicial to the invention licensee;

**Article 146. Conditions of limitation to the right to use inventions transferred under compulsory decisions**

1. The transfer under a decision of a state competent authority shall be in compliance with the following conditions:
  - a) Such right of use is non-exclusive;
  - b) Such right of use shall only be limited to such a scope and period sufficient to attain the aim of the compulsory licensing, and predominantly for the supply of the domestic market, except for the cases referred to in Article 145.1(d) of this Law. With regard to an invention in semiconductor technology, compulsory licensing shall only aim at the public non-commercial purposes or for the purpose of dealing with an anti-competitive act under competition law;
  - c) The licensee shall not assign such right of use, except with the assignment of his or her business premise, or not grant a sub-license to others;
  - d) The licensee shall pay the holder of exclusive right to use invention adequate remuneration in circumstances of each specific case, taking into account the economic value of such right of use, in compliance with the remuneration frame provided for by the Government;
2. In addition to those conditions provided for in paragraph 1 of this Article, the right to use an invention as transferred in any of the cases referred to in Article 137.2 of this Law shall also have to meet the following conditions:
  - a) The holder of exclusive right to use the principal invention shall also be entitled to transfer to right to use independent invention on reasonable terms; and
  - c) The transferee of the right to use the principal invention shall not assign such right, except with the assignment of the whole right pertaining to the independent invention.

**Article 147. Competency and procedures for licensing of inventions under compulsory decision**

1. The Minister of Science and Technology shall make a decision on compulsory licensing for use of invention based on the consideration of a request for such a license in cases provided for in subparagraph b, c and d paragraph 1 Article 145 of this Law.

Ministries, ministerial-level authorities shall, based on the consultation with the Minister of Science and Technology, make such a decision on transfer of the right to use inventions in the field under their respective management in the occurrence of circumstances provided for in subparagraph d paragraph 1 of Article 145 of this Law.
2. A decision on compulsory licensing of inventions shall provide for appropriate scope and conditions of use in accordance with Article 146 of this Law.
3. The state authority having decided on compulsory licensing shall promptly inform the holder of exclusive right to use invention about the decision.
4. A decision on compulsory licensing and a decision on refusal of compulsory licensing shall be subject to an administrative appeal or a judicial litigation in accordance with the laws.
5. The Government shall make specific provisions for on procedures of compulsory licensing of inventions as referred to in this Article.

**Section 4. Registration of contracts for transfer of industrial property rights**

**Article 148. Effect of contracts for transfer of industrial property right**



1. For the industrial property rights established on the basis of registration as referred to in Article 6.3(a) of this Law, a contract for assignment of industrial property right shall only be effective upon registration with the state administration authority of industrial property rights.
2. For the industrial property rights established on the basis of registration as referred to in Article 6.3(a) of this Law, a contract for use of industrial property object shall be effective as agreed by the parties but shall only be effective to a third party upon registration with the state administration authority of industrial property rights.
3. Validity of a licensing contract for use of industrial property object shall be terminated ex-officio upon the termination of licensor's industrial property right.

**Article 149. Dossier for registration of contracts for transfer of industrial property right**

A dossier for registration of a licensing contract for use of industrial property object or a contract for assignment of industrial property right shall comprise the following:

1. A request for registration of contract, made in prescribed form;
2. An original or a valid copy of the contract;
3. The original of the Protection Title (in case of assignment of industrial property right);
4. Co-owners' written consent and a written explanation of the reason for disagreement of the rest co-owners if the industrial property right is under co-ownership;
5. Receipt of fees and charges;
6. Power of attorney, if the dossier is filed through a representative.

**Article 150. Processing dossiers for registration contracts for transfer of industrial property right**

The order and procedures of receiving and processing dossiers for registration of contracts for transfer of industrial property rights shall be provided for by the Government.

**Chapter XI**

**INDUSTRIAL PROPERTY REPRESENTATIVE**

**Article 151. Industrial property representation service**

1. Industrial property representation service includes the following types:
  - a) Representing organizations, individuals before the state authorities having competence in establishment and enforcement of industrial property rights;
  - b) Making advice on issues concerning procedures for establishment and enforcement of industrial property rights;
  - c) Other services concerning procedures for establishment and enforcement of industrial property rights.
2. Industrial property representative include an organization conducting business of industrial property representation service (hereinafter referred to as the industrial property agency) and an individual practicing industrial property representation service of such organization (hereinafter referred to as the industrial property agent).

**Article 152. Scope of the rights of industrial property representatives**

1. An industrial property agency shall only be entitled to provide services within the scope of authorization and to re-authorize another industrial property agency only with a written consent of the authorizing party.
2. An industrial property agency shall be entitled to waive its industrial property representation

business after having legally transferred all pending works to another industrial property agency.

3. An industrial property agency shall not perform the following activities:
  - a) Simultaneously representing parties in conflict of industrial property rights;
  - b) Withdrawing an application for Protection Title, declaring relinquishment of protection or withdrawing an appeal against the establishment of industrial property rights without consent of the authorizing party;
  - d) Deceiving or forcing clients to conclude and implement contracts for industrial property representation services.

#### **Article 153. Responsibilities of industrial property representatives**

1. An industrial property representative shall have the following responsibilities:
  - a) To clearly notify items and rates of fees and charges concerning procedures for establishment and enforcement of industrial property rights, items and rates of service charges under a service charge tariff registered at the state administrative authority of industrial property rights;
  - b) To keep confidential all information and documents relating to a case of one's representation;
  - c) To truthfully and completely inform the represented party about all notifications, requirements of the state authority of establishment and enforcement of industrial property rights; to deliver in time the protection title and other decisions;
  - d) To protect legitimate rights and interests of the represented party by satisfying in time all requirements for the represented party of the state authority of establishment and enforcement of industrial property rights;
  - d') To notify to the state authority of establishment and enforcement of industrial property rights all changes in name, address and other information of the represented party where necessary.
2. An industrial property agency shall have civil liabilities for representative activities performed by its industrial property agent on behalf of the agency.

#### **Article 154. Conditions for conducting industrial property representative service business**

An organization that fulfill the following conditions shall be entitled to conduct business of industrial property representation service as an industrial property agency:

1. To be an enterprise, a law firm, or a scientific and technological service organization established and operating legally;
2. To have a function of conducting business of industrial property representation service, which is recorded in a certificate of business registration, or a certificate of operation registration (hereinafter referred to as the certificate of business registration);
3. The head of the organization or a person authorized by the head shall fulfill conditions for industrial property service practice as provided for in paragraph 1 Article 155 of this Law.

#### **Article 155. Conditions for practicing as an industrial property agent**

1. An individual who fulfills the following conditions shall be entitled to practice industrial property representation service:
  - a) To be granted a Practicing certificate of industrial property agent;
  - b) Working for one industrial property agency.
2. An individual who fulfills the following conditions shall be granted a certificate of practicing industrial property representation service:

- a) To be a Vietnamese citizen, having full capacity for civil acts;
  - b) To reside permanently in Vietnam;
  - c) To have a university degree;
  - d) To have directly worked in legislation of industrial property for at least 5 consecutive years; or have been directly worked in examination of industrial property applications at a national or international industrial property office for at least 5 consecutive years; or have a certificate of graduation from a training course on industrial property laws and regulations recognized by an authority;
  - d') Not to be an official or a public servant working for state authorities of establishment and enforcement of industrial property rights;
  - e) To pass an examination on industrial property representative profession organized by an authority.
2. The Government shall make specific provisions for the program of training on industrial property laws and regulations, the examination of industrial property representative profession, and the grant of a certification of practicing industrial property representation service.

**Article 156. Recordation, deletion of names of industrial property agencies, revocation of Practicing certificates of industrial property agent**

1. Organizations or individuals that fulfill conditions for conducting or practicing industrial property representation service provided for in the Articles 154 and 155 of this Law respectively shall be, at their request, recorded in the National Register of industrial property representatives and published in the Industrial Property Official Gazette by the state administrative authority of industrial property rights.
2. In case where there is ground to know that an industrial property representative no longer fulfills conditions for conducting or practicing provided for in the Articles 154 and 155 of this Law, the state administrative authority of industrial property rights shall delete the name of such industrial property representative from the National Register of industrial property and publish the fact in the Industrial Property Official Gazette.
3. An industrial property agency violating provisions of paragraph 3 Articles 152 and 153 of this Law shall be dealt with in accordance with the laws and regulations;
4. An industrial property agent making profession mistakes while practicing or violating provisions of subparagraph c paragraph 3 Article 152 and subparagraph a paragraph 1 Article 153 of this Law shall, depending on essence and gravity of the violation, be subject to a warning, a monetary fine or revocation of practicing certificate of industrial property agent.

**PART FOUR**

**RIGHTS FOR THE PLANT VARIETY**

**Chapter XI**

**CONDITIONS FOR PROTECTION OF PLANT VARIETIES**

**Article 157. Organization or Individual who can be protected the rights for plant variety**

1. Organization or Individual who can be protected rights for plant variety are Organizations, Individuals which bred or discovered and developed the plant variety or invested in the task to breed or discover and develop the plant variety or the person to who was transferred the rights over the pant varieties.

2. Organizations, Individuals mentioned in the Provision 1 of this Article include Vietnamese and organizations and individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Vietnam; and foreign organizations and individuals which register a permanent residence in Vietnam or have a business or production establishment of plant variety in Vietnam.

**Article 158. General conditions for plant varieties over which rights are protected**

The plant variety over which rights are to be protected is a variety which is bred or discovered and developed, belonging to the List of species able to be protected by State issued by the Ministry of Agriculture and Rural Development, that variety is new, distinct, uniform, stable and has a proper denomination.

**Article 159. Novelty of the plant variety**

The variety shall be deemed to have novelty if the propagating or harvested material of the variety has not been sold or distributed in other ways for the purpose of exploitation by or with the consent of the holder of the registration right as referred to in Article 164 of this Law in the territory of Vietnam more than one year before the date of the application form is submitted; or outside Vietnam more than six years before the date of application form is submitted for trees or grape and 4 years for other species.

**Article 160. Distinctness of the plant variety**

1. The variety shall be deemed to have distinctiveness if it is clearly distinguishable in one or more major characteristics from any other variety whose existence is common knowledge at the time of filing or on the priority date, as the case may be.
2. The common knowledge varieties as stipulated in paragraph 1 mean the varieties of one of the following cases:
  - a) Propagating materials or harvested products of such variety have been widely used in the market of any country in the world at the time of filing of the registration application;
  - b) The variety has been protected or registered into the List of plant species in any country;
  - c) The plant variety is still the subject of an application for protection or for the List of plant species in any country provided that application form was not refused.
  - d) The plant variety which has had its description published.

**Article 161. Uniformity of the plant variety**

The variety shall be deemed to have uniformity in the propagation if there is the same expression of the relevant phenotype unless the variation is permitted for certain characteristic in its propagation process.

**Article 162. Stability of the plant variety**

The variety shall be deemed to be stable if the relevant phenotypic characteristics of that variety retain the same expression as originally described, and remain unchanged after each propagation crop or propagation cycle, as the case may be.

**Article 163. Denomination of plant variety**

1. The registrant must propose an appropriate name for the plant variety which name must be the same as the denomination registered in any country upon filing of a protection registration application
2. The variety shall be deemed to be properly denominated if it is distinguishable from all other

varieties of common knowledge in the same species or similar species.

3. The denominations of plant varieties shall not be considered proper in the following cases:
  - a) Consisting of numerals only, except where such numerals relate to the particularity or the establishment of such plant variety;
  - b) Violating social morality;
  - c) Being liable to misrepresent the feature or characteristics of that variety
  - d) Easy to misunderstand about Breeder's identification.
  - d') Being identical or confusingly similar to a trade mark, trade name or geographical indication already protected before the date of filing of a registration application for protection of such plant variety;
  - e) Being identical or similar to the name of harvested products of such varieties.
  - g) Affecting prior rights of any other organization or individual.
4. Any organization or individual that offers for sale or brings to the market propagating materials of the plant variety must use the name of the plant variety as the name in the Protection Certificate even after the expiry of the protection period stated.
5. When the name of a plant variety is combined with a trademark, a trade name or an indication similar to the name of plant variety already registered for sale or offer in the market, such name must be easily distinctive.

## **Chapter XII**

### **ESTABLISHING THE RIGHTS FOR PLANT VARIETY**

#### **Section 1. Establishing the rights for a plant variety**

##### **Article 164. Registration of the rights over plant varieties**

1. To obtain protection of the rights over for a new plant variety, organizations and individuals must submit the registration for protection to the State administrative authority of industrial property rights.
2. The organizations and individuals holding the right to register the protection of plant variety (to be referred to as **registrant**) include:
  - a) Breeder who directly bred or discovered and developed the variety by their expenses by way of his/her own efforts and expenses.
  - b) Organizations or individuals which invested for the breeder to breed or discover and develop the plant variety by contract unless otherwise agreed.
  - c) Organizations and individuals transferred or inherited the right of registration for Plant variety protection
3. For the plant variety which is bred or discovered and developed by way of using the State's budget or the finance of the project under the State management, the rights over such plant variety will belong to the State. The Government shall make specific provisions for the registration of the right over the plant variety as referred to in this Article.

##### **Article 165. Submission of the application form for rights over a plant variety.**

1. Vietnamese organizations or individuals or foreign organizations or individuals with a permanent address of residence in Vietnam or with a plant variety business or production establishment in Vietnam may file an application for registration of rights over a plant variety (hereinafter referred

to as an **application for protection**) either directly or through its legal representative agency in Vietnam.

2. Foreign organizations and individuals without a permanent address of residence in Vietnam or not having a plant variety business and production establishment in Vietnam may file an application for protection through a lawful representative in Vietnam.

**Article 166. The principles for submitting the first application form for plant variety**

1. In case more than one independent person submits an application for protection on different days, the plant variety protection certificate will be given to the applicant who obtains the earliest valid registration.
2. In case there are many application forms for protection certificate of the same variety submitted in the same day, the plant variety protection certificate will be given to the registrant who is agreed by all the others. If all the registrants could not agree, a plant variety protection certificate will be given by the State management authority of rights over plant varieties to the first breeder who bred or discovered and developed the variety.

**Article 167. Priority principle for the application form.**

1. The registrant may request priority rights in case an application form was submitted within 12 months from the date on which the application form of the same variety has been submitted in a country which and the Socialist Republic of Vietnam both enter into an agreement on plant variety protection. The filing date of the first application shall not be included in this time limit.
2. In order to claim priority, the registrant must specify that claim in the registration application for protection. Within no more than 3 months from submitting the application for protection, the registrant must produce copies of documents as certified by the competent office and samples or other evidence proving that the variety in both application forms is the same and must pay the fees. The registrant must be allowed to supply the information or necessary materials to the State management office of the rights over plant varieties for examination according to the stipulations in Articles 176 and 178 of this Law after 2 years from the date when the priority ends, or in proper time, depending on the species of the plant variety stated in the application, after the first application form is refused or rejected.
3. If the registration application for protection is entitled to the right of priority, the priority date shall be the date when the first application form was submitted.
4. Within the time limit referred to in clause 1 of this Article, the filing of another application or the publication or use of the plant variety being subject of the first application shall not be regarded as a basis for refusing the registration application for protection which is entitled to priority.

**Article 168. Plant variety Protection Certificate and National Registration Book of protected plant varieties**

1. The contents of a Protection certificate include the name of the variety and species; name of the right holder (hereinafter referred to as the Certificate Holder) and Breeder's name as well as the duration of protection of the right over the plant variety.
2. The state management office of the rights over plant varieties will record the contents of the protection certificate into the National Registration Book for protected plant varieties which is established and kept by the State management office of the plant variety.

**Article 169. The effectiveness of the plant variety protection certificate**

1. The Plant variety protection certificate will apply in the whole territory of Vietnam.
2. The plant variety protection certificate will take effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.
3. The plant variety protection certificate may be cancelled or nullified in accordance with Articles 170 and 171 of this Law.

**Article 170. Cancellation and reinstatement of the effectiveness of plant variety protection certificate**

1. The plant variety protection certificate may be cancelled in one of the following cases:
  - a) The uniformity and stability of the protected variety no longer meets the requirements as at the time of granting the certificate;
  - b) Certificate Holder does not pay the annual fees in accordance with the regulations;
  - c) Certificate Holder does not supply the necessary documents and propagating materials for maintaining as prescribed.
  - d) Certificate Holder does not change the name of the plant variety as requested by the State management office of the rights over plant varieties;
2. For the case stipulated in subparagraph a, c and d paragraph 1 of this Article, the State management office of the rights over plant varieties shall issue a decision for cancellation of the plant variety protection certificate.
3. For the case stipulated in paragraph 1.b of this Article, upon the expiry date of the time limit for payment of annual fee, the State management office of the plant variety shall issue a decision on cancellation of the plant variety protection certificate from the first date of the next effective year in which the annual fees is not paid.
4. For the cases stipulated in clause 1(a) of this Article, any organization and individual shall have the right to request the State management authority of the rights over plant varieties for cancellation the effectiveness of the plant variety protection certificate.

Based on the results of the application to request the cancellation of the plant variety protection certificate and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision to cancel the certificate or to refuse the cancellation of the protection certificate.

5. For the cases stipulated in paragraph 1 this Article, the State management office of the rights over plant varieties shall promulgate the cancellation in a specialized bulletin and specify the reasons for such cancellation and at the same time shall serve a notice to the certificate holder. Within 30 days from the date of publication, the certificate holder has the right to submit a request to the State management office of the rights over plant varieties to explain the reasons why the plant variety protection certificate is cancelled and must pay the fee in order to reinstate the plant variety protection certificate. Within 90 days from the date of filing, the protection certificate holder must solve the reasons for which the certificate was cancelled, with regard to the cases stipulated in subparagraphs b, c and d paragraph 1 of this Article. The State management office of the rights over plant varieties shall then consider reinstating the validity of the protection certificate and making it public in the specialized bulletin.

For the cases stipulated in paragraph 1.a of this Article, the effectiveness of the plant variety protection certificate shall be reinstated if the holder succeeds in proving that the plant variety has

met the requirements as to the uniformity and stability and has been so certified by the State management office of the rights over plant varieties.

**Article 171. Nullity of the effectiveness for plant variety protection certificate.**

1. The effectiveness of the plant variety protection certificate will be nullified in the following circumstances:
  - a) The application form belongs to an applicant who does not have the right to file, except where the right over a plant variety has been assigned to the holder of the registration right;
  - b) The protected variety did not meet the conditions for novelty or distinctness at the time of granting the plant variety protection certificate.
  - c) The protected variety did not meet the conditions for uniformity or stability if the plant variety protection certificate is granted on the basis of technical test results which were supplied by the registrant.
2. Any organization or individual can request the state administrative authority of the rights over plant varieties to nullify the plant variety protection certificate during the effectiveness of the plant variety protection certificate.

Based on the results of examining the requirement of the nullity and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision on refusal to annul or shall issue a decision on the nullity the effectiveness of the plant variety protection certificate or to refuse such nullification.

3. In case of the plant variety protection certificate is nullified, all the transactions arising on the basis of the plant variety right are null and void. Such null and void transactions shall be dealt with in accordance with the Civil Law.

**Article 172. Amendment or re-issue of the plant variety protection certificate**

1. The owner of a protection Certificate has the right to request the State management office of the rights over plant varieties to change or rectify any error relating to the name and address of the holder of the protection certificate, provided that prescribed fees and charges must be paid. If such errors are made by the State management office of the rights over plant varieties, this office must rectify such errors and the holder of the protection certificate shall be liable for payment of any fees and charges.
2. The holder of a protection certificate may request the State management office of the rights over plant varieties to re-issue such plant variety protection certificate it is lost or damaged provided that prescribed fees and charges must be paid.

**Article 173. Publishing the decisions related to the protection certificate.**

All the decisions related to the grant, re-issue, cancellation, nullity, amendment the variety protection certificate shall be published by the State management office of the rights over plant varieties in a specialized bulletin within 60 days from date when the decision is issued.

**Section 2. Application form and the procedures for processing registration applications for protection**

**Article 174. Registration applications for protection**

1. The application for registering the rights for new plant variety protection must include:
  - a) A registration form using the prescribed form;
  - b) Photos and technical questionnaires using the prescribed form;



- c) Authorization paper if the application form is filed through a representative;
  - d) The documents which demonstrate the registration right if the registrant is a person to whom the right for registering has been transferred;
  - d') Documents to prove the priority in case of claiming for priority.
  - e) The receipt of the fees.
2. A registration application for protection and any transaction documents between the registrant and the State management office of the rights over plant varieties must be made in Vietnamese, except for the following documents which may be made in another language but must be translated into Vietnamese at the request of the State management office of the rights over plant varieties:
- a) The power of attorney;
  - b) Documents evidencing the registration right;
  - c) Documents evidencing the priority;
  - d) Other documents
3. The documents proving the right of priority for registration of the application form for protection include:
- a) The copy of the application form or the first application form certified by the authorized organization.
  - b) The paper of transfer or inheritance of the right for priority if the right is transferred from another person.

**Article 175. Receiving the application form; Submission date**

- 1. The registration application for protection will be accepted by the State management office of the rights over plant varieties with all documents stipulated in paragraph 1 Article 174 of this Law.
- 2. The filing date for application form is the date on which the application form is received by the State management office of the rights over plant varieties.

**Article 176. Examining the validity of the application form.**

- 1. Within 15 days from the filing date, the application form will be examined by the State management office of the rights over plant varieties in order to determine the validity of the application.
- 2. The registration application for protection shall be regarded as invalid when one of the following cases applies:
  - a) The application form does not follow the requirements;
  - b) The variety in the application form does not belong to a species in the List of protected species;
  - c) The registrant does not have the right for filing including when the registration right belongs to several organizations or individuals where one of them does not agree upon the registration.
- 3. The State management office of the rights over plant varieties will carry out the procedures as follows:
  - a) To announce the refusal of accepting the application form for the cases stipulated in subparagraph b) and c) paragraph 2 of this Article with the reasons for refusing;
  - b) To inform to the registrant to correct the mistakes for the cases stipulated in subparagraph a) paragraph 2 of this Article and to inform the time of 30 days from receipt of the notice for the correction to the registrant;

- c) To inform the refusal of the application form if the registrant does not correct the mistakes or if the registrant does not have a reasonable appeal against the notice referred to in paragraphs 2.b of this Article;
- d) To announce acceptance of the application form, requesting the registrant to submit sample of the variety to the organization in charge of the technical test and follow the procedures stipulated in Article 178 of this Law if the application form is valid or if the registrant has corrected mistakes or gave a reasonable response to the notice as stipulated in subparagraph b of this paragraph.

**Article 177. Publication of the application form for protection**

1. If the application form is valid, the State management office of the rights over plant varieties shall publish in the specialized bulletin on plant varieties within 90 days from the date such application is accepted.
2. The contents of publication include: No of application form, date of filing, representative agent (if have), name of registrant, name of owner, variety name, species, the date on which the application form was accepted as valid.

**Article 178. Examining the content of the application form for registering of plant variety protection.**

1. The State management office of the rights over plant varieties shall examine the contents of the application form which is accepted as valid. The examination includes:
  - a) To examine for novelty and the denomination.
  - b) To examine the results of Technical Test of the variety.
2. Technical Test means the conduct of growing tests in order to determine the distinctness, uniformity and stability of the variety.

The technical test shall be carried out by the competent office or organizations or individuals who have enough capacity for conducting the technical test following the stipulations of the Ministry of Agriculture and Rural Development.

The state administrative authority of the rights over plant varieties may use the results of the previous technical test.

3. The time for examining of the test results shall be 90 days from the date of receiving the technical test results.

**Article 179. Modify and supplement the application form**

1. The registrant has the following rights before the state administrative authority of the rights over plant varieties decides to grant or not to grant the plant variety protection certificate or decision of the grant:
  - a) To modify or amend the application form without changing the nature of the registration application for protection;
  - b) To request acknowledging the changes of name and address of the registrant.
  - c) To request acknowledging the changes of the registrant due to transfer the application form under a contract or as a result of inheritance or bequest.
2. The person who requests any of the procedures stipulate at paragraph 1 of this Article must be submit fees and annual fee.

**Article 180. Withdrawing the application form for registration**

1. Before the state administrative authority of the rights over plant varieties decides to grant or refuse to grant the protection certificate, the registrant can withdraw the application form for protection. A request for such withdrawal must be made in writing.
2. From the time which the registrant requests to withdraw the application form for protection, all the next procedures related to the application will be terminated; the fees which have been submitted for the procedures that have not yet been conducted will be refunded following the request from the registrant.

**Article 181. Opinion of the third party for granting the plant variety protection certificate**

From the date of publication of the registration application for protection of plant variety in the professional bulletin until the time a decision for granting a plant variety protection certificate is made, any third party can send an opinion as about the issue of a plant variety protection certificate to the State management office of the rights over plant varieties. The opinion must be made in writing accompanied by arguments and evidence to support the opinion.

**Article 182. Refusal to grant the plant variety protection certificate**

An application form for protection shall be refused for the issue of a plant variety protection certificate in case the variety does not meet any conditions stipulated in Articles 176 and 178 of this Law. In case of refusal, the State management office of the rights over plant varieties shall implement the follow procedures:

1. Announce the proposal to refuse the grant of a Protection Certificate stating the reasons and the deadline for the registrant to amend the shortcomings or appeal against the announcement.
2. Announce the refusal of the grant of protection certificate if the registrant has not amended the shortcomings or have not made an appeal against the announcement stipulated in paragraph 1 of this Article.
3. Implement the procedures stipulated in Article 183 of this Law if the registrant has amended the shortcomings or gives a valid opinion to appeal against the proposal to grant stipulated in paragraph 1 of this Article.

**Article 183. Granting plant variety the protection certificate**

If a registration application for protection is not refused as set out in Article 182 of this Law and if the registrant pays the fee, the State management office of the rights over plant varieties shall issue the decision for granting the plant variety protection certificate and record this into the National Registration Book of Protected Plant Varieties.

2. To grant the protection certificate to the applicant.

**Article 184. To complain about the issue or refusal to issue plant variety protection certificates**

1. The registrant and any other third party have the right to complain about a decision to grant or the refusal to grant a plant variety protection certificate.
3. Any complaint about decisions to grant or refuse to grant the plant variety protection certificate will be carried out according to the Law on Complaints and Denunciations.

**Chapter XIV**

**CONTENTS AND LIMITATIONS OF RIGHTS FOR THE PLANT VARIETY**

**Section 1. The contents of rights over plant variety**

**Article 185. Rights of the Breeder**

The Breeder of a plant variety has following rights:

1. Name of the Breeder will be recorded on the plant variety protection certification and in the National Register Book for protected plant varieties and in all the published documents relating to the plant variety;
2. To get compensation as stipulated in paragraph 1(a) Article 191 of this Law;

**Article 186. Rights of the Protection Certificate Holder**

1. The Holder of a protection certificate has the rights to use or permit other persons to use the following rights over the propagating materials of the protected plant variety:
  - a. Production or multiplication;
  - b. Processing for the purpose of propagation;
  - c. Offering for sale;
  - d. Selling or other marketing;
  - dd. Exporting;
  - e. Importing;
  - g. Stocking for any of the purposes listed in points a, b, c, d, dd and e of this clause.
2. To prohibit other from using the plant variety in accordance with Article 188 of this Law.
3. To pass by inheritance or bequest or transfer the rights over the plant variety in accordance with Chapter XV of this Law.

**Article 187. Extension of the rights of the protection certificate holder**

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties that originate from the protected plant variety except where such protected plant varieties themselves originate from another protected plant variety;  
A plant variety is regarded as originating from a protected plant variety if such plant variety has still retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected variety except for the differences resulting from actions on the protected variety.
2. Plant varieties which are not clearly different from the protected plant variety;
3. Plant varieties, the production of which requires the repeated use of protected plant varieties.

**Article 188. Acts which infringe the rights over plant varieties**

The following acts shall be considered as infringements upon to the rights of the protection certificate holders:

1. Exploiting or using the rights of the protection certificate holder without his permission.
2. Using a denomination of the variety which is identical or similar to a protected denomination of the plant variety of the same or other similar species.
3. Using the protected plant variety without payment of the compensation amount provided for in Article 189 of this Law.

**Article 189. Temporary rights over for the plant varieties**

1. The temporary rights over a plant variety are the rights of the registrant for protection of the plant variety which arise from the date of publication of the registration application for protection until the date of grant of a plant variety protection certificate. The registrant will not have the temporary right in case the variety protection certificate is not granted.
2. If the registrant is aware of the fact that another person has been exploiting the plant variety for

commercial purposes, the registrant has the right to inform that person in writing of the existence of a registration application for protection of the plant variety lodged by the registrant and must specify the date of submission, the date on which the registration application for protection has been published in order for such another person to terminate the exploitation or continue using it.

3. The user of the variety must pay an amount equivalent to the value of transfer of the right to use such variety within an appropriate scope and using time in case the announcement has been informed as stipulated in Paragraph 2 of this Article and the user continues using.

## **Section 2. Limitations of rights over plant varieties**

### **Article 190. Limitations to the right of a plant variety protection certificate holder**

1. The following acts are not considered as infringements of the rights over a protected plant variety:
  - a. Using the variety privately for non-commercial purposes;
  - b. Using the variety for breeding and for scientific research purpose;
  - c. Using the variety to create new plant varieties distinctive from the protected plant varieties;
  - d. Production households may use the harvested products of the protected variety for propagation and cultivation in the next season in their own field.
2. Rights over a plant variety shall not be extended to the acts related to any materials of the protected variety which have been sold or otherwise taken out of the Vietnamese or overseas market by the breeder or his or her nominee, except for the following acts:
  - a) Relate to the continuous propagation of such a plant variety;
  - b) Relate to the export of propagating materials of such plant variety to a country where the genus or species are not protected except where such materials are exported for consumption purpose only;

### **Article 191. Obligations of the Holders and Breeder**

1. The Holder of the protection certificate has the following obligations:
  - a) To pay compensation to the breeder as agreed between them, in the absence of such agreement, the compensation must be paid following the stipulations of the Law.
  - b) To pay fees for the plant variety protection certificate according to the stipulation.
  - c) To preserve the protected variety and to supply propagating material of the protected variety to the state administrative authority of the rights over plant varieties and to maintain the stability of the protected variety as the stipulations.
2. The Breeder of the variety has the obligation to help the protection certificate holder to maintain the propagating material of protected variety.

## **Chapter XV**

### **TRANSFER OF THE RIGHTS TO A PLANT VARIETY**

#### **Article 192. Transfer the rights to use of the plant variety**

1. Licensing for use of a plant variety means the permission of the Holder of the plant variety given to another person to conduct one or some acts of his right to use the plant variety.
2. The licensing for use of a plant variety shall be consented by all holders in case the right falls under co-ownership.
3. The licensing for use of a plant variety shall be conducted in the form of a written contract.

4. A licensing contract for use of a plant variety shall not have such provisions that unreasonably restricts the right of the licensee, particularly those provisions neither deriving from, nor aimed at protecting of, the rights of the licensor to the plant variety.

**Article 193. The rights of the parties in licensing contract**

1. The licensor shall have the rights to permit or not permit the licensee to assign the license for use to a third party;
2. The licensee shall have the following rights:
  - a) To assign the license for use to a third party if it is agreed by the licensor;
  - b) To request to the licensor to carry out necessary measures against any infringements by a third party causing damage to the licensee.
  - c) To carry out necessary measures to prevent a third party infringements if within a time limit of 3 months from the date of the request, the licensor fails acts as requested the in accordance with sub paragraph b of this clause.

**Article 194. Assignment of the rights for plant variety**

1. To assign the rights for a plant variety means that the holder of the plant variety transfers all the rights of such plant variety to the assignee. The assignee shall become the owner of the plant variety Protection Certificate from the date for registration of the assignment contract with the state administrative authority of the rights over plant varieties in accordance with the prescribed procedures.
2. Where the right of a plant variety is under co-ownership, the assignment of such rights must be consented by all owners.
3. The assignment of the ownership rights to a plant variety must be made in a written contract.

**Article 195. Bases and conditions for compulsory licensing for use of the plant variety**

1. In the following cases, the right to use a plant variety shall be licensed to another organization or individuals under a decision of the state competent authority as referred to in Article 196.1 of this Law without having to obtain permission from the protection certificate holder or his nominee (to be referred to as the **holder of the exclusive right to use the pant variety**):
  - a) The use of such plant variety is for the public interest, for non-commercial purpose, to satisfy the needs of national defense, national security, disease prevention, treatment and nutrition for people or to meet other social urgent needs;
  - b) The person having a demand and capacity to use the plant variety fails to reach an agreement with the holder of the exclusive right to use the plant variety upon entering into a licensing contract although best efforts have been made for a reasonable period of time to negotiate the price rate and other commercial conditions.
  - c) The holder of the exclusive right to use the plant variety is regarded as conducting an act of constraint of competition under the competition legislation.
2. The holder of the exclusive right to use the plant variety has the right to terminate the right has the right to request for termination of such right of use when the bases of compulsory licensing provided for in clause 1 of this Article cease to exist and are unlikely to recur, provided that such termination shall not prejudicial to the licensee.
3. The right to use a plant variety shall be transferred under a decision of a state competent authority in compliance with the following conditions:

- a) Such right of use is non-exclusive;
  - b) Such right of use shall only be limited to such a scope and period sufficient to attain the objectives of the compulsory licensing, and predominantly for the supply of the domestic market, except for the cases referred to in clause 1(c) of this Article;
  - c) The licensee shall not assign such right of use to another person, except with the assignment of his or her business premise, or not grant a sub-license to others;
  - d) The licensee must pay an adequate compensation to the holder of exclusive right to use the plant variety taking into account the economic value of such right of use in each specific case, in compliance with the remuneration frame provided for by the Government;
4. The Government shall make specific provisions for the cases of compulsory licensing of the right to use plant varieties and the compensation frame as referred to in Article 3(d) of this Article.

**Article 196. Power and procedures for licensing the right to use plant varieties under compulsory decisions**

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing the right to use a plant variety in the fields under the scope of its State administration on the basis of a relevant request in the cases set out in Article 195.1 of this Law.

Ministries, ministerial-level agencies shall issue decisions to license the right to use plant varieties in the fields under the scope of its State administration on the basis of consultation with the Ministry of Agriculture and Rural Development in the cases referred to in Article 195.1 of this Law

2. A licensing decision must fix the scope and conditions of such use in accordance with Article 195.3 of this Law.
3. The State competent authority that makes a decision on licensing the right to use a plant variety must notify this decision to the holder of the exclusive right to use such plant variety.
4. A decision on licensing the right to use a plant variety or refusal to license the right to use a plant variety may be complained about or subject to a lawsuit in accordance with the law.
5. The Government shall make specific provisions for procedures for licensing of the right to use a plant variety as referred to in this Article.

**Article 197. Rights of Protection Certificate holders in case of compulsory licensing**

The protection certificate holder being subject of compulsorily licensing of the right to use a plant variety shall have the following rights:

1. To receive an adequate compensation corresponding to the economic value of such right of use or equivalent to the price of contractual licensing of such right with similar scope and term;
2. To request the state administrative authority of the rights over plant varieties to amend, cancel or nullified the validity of the compulsory license when the conditions resulting in such compulsory licensing no longer exist or if such amendment, cancellation or nullity does not cause damages to the compulsory licensee.

**PART FIVE**

**PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

**Chapter XVI**

**GENERAL PROVISIONS ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

**Article 198. Right to protection by oneself**

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:
  - a) Taking technological measures to prevent infringement of intellectual property rights;
  - b) Requesting organizations, individuals that have committed acts of infringement of intellectual property rights to terminate the infringing acts, apologize, publicly rectify and compensate damages;
  - c) Requesting the competent state agencies to handle acts of infringement of intellectual property rights in accordance with provisions of this Law and other related laws and regulations;
  - d) Initiating a lawsuit at a competent court or an arbitrator to protect their legitimate rights and interests;
2. Organizations and individuals that suffer from damage caused by acts of infringement of intellectual property rights or discover acts of infringement of intellectual property rights that cause damage to consumers or the society shall have the right to request State competent agencies to handle such acts of infringement in accordance with the provisions of this Law and other related laws and regulations.
3. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request State competent agencies to impose civil remedies provided for in Article 202 of this Law and administrative remedies provided for in the laws on competition.

**Article 199. Remedies against acts of infringement of intellectual property rights**

1. Organizations and individuals that have committed acts of infringement of other's intellectual property rights are liable to civil, administrative or criminal remedies, depending on nature and extent of such infringement.
2. In appropriate cases, State competent agencies shall have the right to apply provisional measures, intellectual-property-related control measures with regard to imports and exports and preventive measures and shall ensure that administrative penalties shall be imposed as provided for in this Law and other related laws and regulations.

**Article 200. Authorities in handling the infringement of intellectual property rights**

1. Courts, inspectorate, market management agencies, custom offices, police agencies and the People's Committees of all levels, within its duties and authorities, are entitled to handle acts of infringement of intellectual property rights.
2. The application of civil remedies and criminal remedies shall fall within the authorities of the courts. In appropriate cases, the courts are entitled to apply provisional measures in accordance with the laws and regulations.
3. The application of administrative remedies shall fall within the authorities of inspectorate, police agencies, market management agencies, custom offices and the People's Committee of all levels. In appropriate cases, the above-mentioned agencies are entitled to apply preventive measures and ensure that administrative penalties shall be imposed in accordance with the laws and regulations.
4. The application of intellectual property border control measures with regard to imports and exports shall fall within the authorities of custom offices.

**Article 201. Inspection, assessment on intellectual property**

1. Inspection and assessment on intellectual property means the competent organizations or



individuals use their knowledge and expertise in intellectual property to make assessment, conclusion on matters related to intellectual property right infringement cases.

2. State competent agencies shall have the right to call for inspection, assessment on intellectual property in order to handle those cases accepted by these agencies.
3. Intellectual property right holders and other related organizations or individuals shall have the right to request for inspection, assessment on intellectual property in order to protect their legitimate rights and interests.
4. The government shall make specific provisions on inspection and assessment on intellectual property.

## **Chapter XVII**

### **DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS THROUGH CIVIL REMEDIES**

#### **Article 202. Civil remedies**

The court shall take the following civil remedies to handle organizations and individuals that have committed acts of infringement of intellectual property rights:

1. Compelling termination of the infringement of intellectual property rights;
2. Compelling public rectification and apology;
3. Compelling the performance of civil obligations;
4. Compelling compensation for damages;
5. Compelling destruction, distribution or use for non-commercial purpose in respect of goods, materials and implements the predominant use of which has been in the creation or trading of intellectual property right infringing goods, provided that such distribution and use does not affect the exploitation of rights by the intellectual property rights holder.

#### **Article 203. Rights and burden of proof of the litigants**

1. The plaintiff and defendant in a lawsuit against infringement of intellectual property rights shall have the rights and burden of proof provided for in Article 79 of the Civil Procedures Code and this Article.
2. The plaintiff shall prove that he or she is the intellectual property right holder with one of the following evidences:
  - a) A valid copy of the Copyright Registration Certificate, Related Right Registration Certificate, Protection Title, or an extract from the National Registers of Copyrights and Related Rights, the National Registers of Industrial Designs, layout-designs and National Registers of Protected Plant Varieties;
  - b) Necessary evidence proving basis the establishment of copyrights, related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the rights to business secrets, trade names or well-known marks;
  - c) Copies of licensing contracts for using intellectual property subject matters in case the right to use is licensed under a contract.
3. The plaintiff shall produce evidence of the infringement of intellectual property rights or acts of unfair competition.
4. In a lawsuit against an infringement of the right to a patented invention, which is a production process, the defendant shall prove that his or her products are made by a process other than the

protected process:

- a) The product made by the protected process is new;
  - b) The product made by the protected process is not new, but the owner of the protected process believes that the product of the defendant is made by the protected process and failed identify the process used by the defendant despite that reasonable measures have been taken.
5. In case a party to a lawsuit against an infringement of intellectual property rights has proven that evidence relevant to substantiation of his or her claims lies in the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the later to produce such evidence.
  6. In case of a claim for damages, the plaintiff must prove his or her actual damages and specify the basis for his or her claim in accordance with Article 205 of this Law.

#### **Article 204. Principles of determination of damages caused by the infringement of intellectual property rights**

1. Damages caused by an infringement comprise:
  - a) Physical damages comprise loss in property, decrease in income and profits, losses in business opportunities, reasonable expenses for prevention and restoration from such damages, reasonable attorney fees and other tangible losses;
  - b) Spiritual damages comprise loss to honor, dignity, prestige, reputation and other spiritual losses caused to the authors of literary, artistic and scientific works; to performers, authors of inventions, industrial designs, lay out designs; and breeders.
2. The level of damage shall be determined on the basis of the actual losses suffered by the intellectual property right holders due to the infringement of his or her intellectual property rights.

#### **Article 205. Bases for determination of damages caused by the infringement of intellectual property rights**

1. In case the plaintiff succeeds in proving that an infringement of intellectual property rights has caused physical damages to him or her, he or she shall have the right to request the court to determine the rate of compensation on one of the following bases:
  - a) The total physical damage determined in an amount of money plus the profits gained by the defendant as a result of infringement if reduced profits of the plaintiff have not yet been included in the total physical damage;
  - b) The value of the transfer of the right to use the intellectual property subject matter with the presumption that the defendant has been transferred by the plaintiff with the right to use that intellectual property subject matter under an agreement for using such intellectual property subject matter to the extent equivalent to the act of infringement committed;
  - c) Where it is impossible to determine the rate of compensation in accordance with subparagraphs a) and b) of this paragraph, that rate shall be fixed by the court depending on the loss level but not exceeding VND 500 million.
2. If the plaintiff succeeds in proving that the infringement of intellectual property rights has caused spiritual damage to him or her, he or she shall have the right to request the court to determine the rate of compensation ranging from VND 5 million to VND 50 million, depending on the level of damage.
3. In addition to the damages referred to in clauses 1 and 2 of this Article, an IPR holder may request

the court to compel the infringer to pay reasonable costs of hiring attorneys.

**Article 206. Right to request the court to apply provisional measures**

1. Upon or after initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:
  - a) There is a threat of irreparable damage to the intellectual property right holder;
  - b) There is a threat of dispersal or destruction of goods suspected of infringing upon intellectual property rights and relevant evidence if they are not protected in time.
2. The court shall decide to apply provisional measures at the request of the IPR holder as set out in clause 1 of this Article before listening to the opinion of the party liable for such provisional measure.

**Article 207. Provisional measures**

1. The following provisional measures shall be applicable to goods suspected of infringing upon intellectual property rights or to the materials, raw materials or implements for producing or trading such goods:
  - a. Seizure;
  - b. Attachment;
  - c. Sealing, prohibition of changing status or displacing;
  - d. Prohibition of transferring ownership;
2. Other provisional measures shall be applied in accordance with the Civil Procedure Code.

**Article 208. Obligations of the person who requests for the application of provisional measures**

1. A person who requests for the application of provisional measures is obliged to prove his or her right to request as provided for in paragraph 2 Article 206 of this Law, including the production of materials and evidence as provided for in paragraph 2 Article 203 of this Law.
2. A person who requests for the application of provisional measures is obliged to pay compensation for the damages to such provisional measure debtor in case such person is found not to infringe the IPRs. To secure the performance of this obligation, the person who requests for the application of provisional measures must deposit a sum of security in one of the following forms:
  - a) Depositing an amount of money equal to 20% of the value of the goods that is subject to the application of provisional measures, or at least 20 million VND if it is impossible to evaluate those goods;
  - b) Submitting a guarantee document issued by a bank or other credit organizations

**Article 209. Termination of the application of provisional measures**

1. The court shall decide to terminate the application of a provisional measure in any of the cases referred to in paragraph 1 Article 122 of the Civil Procedure Code or in case that the provisional measure debtor succeeds in proving that the application of such provisional measure is unreasonable.
2. In case of termination of the application of a provisional measure, the court shall consider reimbursement to the requesting person of the deposited amount referred to in paragraph 2 Article 208 of this Law. If the request for the application of provisional measure is unreasonable, causing damage to the provisional measure debtor, the court shall compel the requesting person to compensate the damage.

**Article 210. Authorities and procedures for applying provisional measures**

The authorities and procedures for applying provisional measures shall comply with the provisions of Chapter VIII of Part One of the Civil Procedure Code.

**Chapter XVII**

**DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS THROUGH ADMINISTRATIVE AND CRIMINAL REMEDIES; CONTROL OF INTELLECTUAL-PROPERTY-RELATED IMPORTS AND EXPORTS**

**Section 1.**

**Dealing with infringements of intellectual property rights through administrative and criminal remedies**

**Article 211. Acts of IPR infringements liable for administrative remedies**

1. The following acts of IPR infringements shall be subject to the administrative remedies:
  - a) Committing an act of infringement of intellectual property rights, which causes loss to consumers or the society;
  - b) Not terminating an act of infringement of intellectual property rights, even if a written notice has been served by the intellectual property right holder;
  - c) Producing, importing, transporting, and trading in intellectual property counterfeit goods referred to in Article 213 of this Law or assigning others to do so;
  - d) Producing, importing and trading in articles bearing a mark or a geographical indication that is identical with or confusingly similar to a protected mark or a protected geographical indication or assigning others to do so;
2. The Government shall make specific provisions for acts of IPR infringements to be liable for administrative remedies, form and level of remedies and procedures for imposing such administrative remedies.
3. Organizations and individuals that have committed acts of unfair competition shall be liable to the administrative remedies provided for in the competition legislation.

**Article 212. Acts of IPR infringements liable for criminal remedies**

Individuals who have committed acts of infringement of intellectual property rights having factors that constitute a crime shall be liable to the criminal liabilities in accordance with the criminal laws and regulations.

**Article 213. Intellectual property counterfeit goods**

1. Intellectual property counterfeit goods referred to in this Law include counterfeit mark goods or counterfeit geographical indication goods (hereinafter referred to as counterfeit mark goods) referred to in paragraph 2 of this Article and pirated goods referred to in paragraph 3 of this Article.
2. Counterfeit mark goods are goods or their packaging bearing a mark or a sign which is identical with or substantially indistinguishable from a mark or geographical indication which is protected for such goods without consent of the owner of such mark or the management organization of such geographical indication respectively.
3. Pirated goods are copies made without the consent of the copyrights holder or the related rights holder.

**Article 214. Administrative penalties and remedies**

1. Organizations and individuals that have committed acts of IPR infringement referred to in Article 211.1 of this Law shall be compelled to terminate the infringement and subject to one of the following main remedies:
  - a) Warning;
  - b) Monetary fine.
2. Depending on nature and level of the infringement, the IPR infringing organizations and individuals are liable to the following complementary remedies:
  - a) Confiscation of intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods;
  - b) Suspension of relevant business activities for a definite term.
3. In addition to the remedies referred to in paragraphs 1 and 2 of this Article, organizations and individuals that have committed IPR infringing acts are liable to the following restoration remedies:
  - a) Compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes and materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods provided that such distribution and use does not affect the exploitation of rights by intellectual property right holder;
  - b) Compelling delivery of the transiting goods out of the territory of Vietnam or re-export of the intellectual property counterfeit goods, implements and materials that are imported mainly for manufacturing or trading such intellectual property counterfeit goods, after having removed infringing elements.
4. The monetary fine rates referred to in subparagraph b of paragraph 1 of this Article shall be at least equal to the value of the discovered infringing goods but must not exceed five times of that value.

The Government shall make detailed provisions for the method of determination of the value of infringing goods.

#### **Article 215. Application of preventative measures**

1. In the following cases, organizations and individuals shall have the right to request the competent agency to apply administrative remedies and ensure that administrative penalties shall be imposed in accordance with clause 2 of this Article:
  - a) Acts of infringement of intellectual property rights may cause serious damage to consumers or the society;
  - b) There is a threat of the infringing means being dispersed or the infringer evading his or her liabilities;
  - c) In order to guarantee the implementation of administrative remedies.
2. Administrative preventative measures applicable under administrative procedures to the infringement of intellectual property rights comprise the followings:
  - a) Temporary hold of related individuals;
  - b) Temporary detention of the goods, means and implements used for such infringement;
  - c) Search of related individuals;

- d) Search of the place where infringing goods, means and implements are stored;
- d') Other administrative preventative measures in accordance with the laws and regulations.

## **Section 2. Control of IP-related imports and exports**

### **Article 216. Border control measures of IP-related imports and exports**

1. Border control measures of IP-related imports and exports comprise the followings:
  - a) Suspension of customs procedures for suspected intellectual property right infringing goods.
  - b) Supervision to detect goods containing signs of infringement of intellectual property rights.
2. Suspension of customs procedures for suspected intellectual property right infringing goods is a measure taken at the request of the intellectual property right holder for the purpose of collecting information and evidence about the lots of goods which serves as the basis for the intellectual property right holder to exercise the right to request for the handling of the infringement and to request for the application of provisional measures or preventive measures, and to ensure that an administrative penalty is to be imposed.
3. Examination and supervision to detect goods containing signs of infringement of intellectual property rights is a measure taken at the request of the intellectual property right holder for the purpose of collecting information in order to exercise the right to request for the suspension of customs procedures.
4. During the course of application of measures referred to in paragraphs 2 or 3 of this Article, if any goods detected to be intellectual property counterfeit goods in accordance with Article 213 of this Law, the customs offices shall have the right and duty to impose administrative remedies referred to in Article 214 and Article 215 of this Law.

### **Article 217. Obligations of person who requests for the application of border control measures of IP-related imports and exports**

1. A person who requests for the application of border control measure in respect of IP-related imports and exports shall have the following obligations:
  - a. Proving that he or she is the intellectual property right holder by producing the materials and evidence referred to in paragraph 2 Article 203 of this Law.
  - b. Providing information sufficient to identify the suspected intellectual property right infringing goods or to discover infringing goods.
  - c. Lodging an application with the customs office and pay fees and charges prescribed by the laws and regulations.
  - d. Payment of damages and other incurred expenses to the persons being subject to such measure in case the goods subject to that control measure are found not to infringe upon IPRS.
2. To secure the performance of the obligations set out in clause 1(d) of this Article, a person requesting for the application of measure of suspension of customs procedures must deposit a sum of security in one of the following methods:
  - a) Depositing an amount of money equal to 20% of the value of the lots of goods that is subject to the suspension of customs procedures; or at least VND 20 million if it is impossible to evaluate such lots of goods;
  - b) Submitting a guarantee document issued by a bank or other credit organizations.

### **Article 218. Procedures for the application of suspension of customs procedures**

1. When a person who requests for the suspension of customs procedures has properly performed his

or her obligations provided for in Article 217 of this Law, the customs office shall issue the decision on suspension of customs procedures with regard to relevant lots of goods.

2. The term of suspension of customs procedures shall be 10 working days from the date of issuing the decision on the suspension of customs procedures. This term may be prolonged up to 20 working days if the person who requests for the suspension of customs procedures has due reasons and having deposited an additional amount of money referred to in paragraph 2 of Article 217 of this Law.
3. At the expiration of the term provided for in paragraph 2 of this Article if the person who requests for the suspension of customs procedures fails to initiate a civil lawsuit and the customs office does not accept the case to handle the importer of the lots of goods under administrative procedures, the customs office shall:
  - a) Continue the completion of customs procedures for such lots of goods;
  - b) Compel the person who requests for the suspension of customs procedures to compensate all the damages incurred by the owner of the lots of goods due to unreasonable request for the suspension of customs procedures, and to pay expenses for storage and preservation of goods as well as other costs incurred by the customs office and other related organizations and individuals in accordance with the laws and regulations on customs;
  - c) Reimburse the person who requests for the suspension of customs procedures the rest of the deposited guarantee amount after having performed obligations and paid all the costs referred to in sub-paragraph b) of this paragraph.

**Article 219. Examination and supervision to detect goods containing signs of IPR infringement**

When an IPR holder requests for examination and supervision to detect a lot of goods containing signs of IP infringement and when such lot of goods is detected, the customs office shall immediately notify the person who requests for such examination and supervision. Within three working days from the date of such notification, if the person that made the request fails to make a request for suspension of customs procedures with regard to the detected lot of goods and the customs office does not decide to handle the importer of the lots of goods with administrative remedies in accordance with Articles 214 and 215 of this Law, the customs office shall continue the completion of customs procedures for such lots of goods.

**PART SIX**

**PROVISIONS OF IMPLEMENTATION**

**Article 220. Transitional provisions**

1. Any copyright or related right protected under the legal documents applicable before the effective date of this Law shall continue to be protected under this Law if it remains in term of protection on that date.
2. Any applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin, layout-designs, new plant varieties which have been filed with competent authorities before the effective date of this Law shall be handled in accordance with legal instruments at the time of the filing of the application.
3. All rights and obligations conferred by Protection Titles granted under the provisions applicable before the effective date of this Law and procedures for maintenance, renewal, correction, license, assignment, resolution of disputes concerning these protection titles shall be subject to this Law, except for those grounds for invalidation of a Protection Title which shall only be subject to the

provisions of legal documents applicable at the time of its grant.

4. Trade secrets and trade names which have been existing and protected under Decree 54/2000/ND-CP dated October 3, 2000 of the Government on the protection of industrial property rights with regard to trade secrets, geographical indications, trade names and the protection of rights against industrial property related unfair competition shall be continued to be protected under this Law.
5. From the effective date of this Law, geographical indications, including those protected under the Decree referred in paragraph 4 of this Article, shall only be protected if they are registered with the state administration authority of industrial property.

**Article 221. Effectiveness**

This Law shall enter into force as from 1 July 2006.

**Article 222. Guidance of implementation**

The Government and the Supreme People's Court shall make detailed provisions and provide guidelines for the implementation of this Law.

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*This Law has been ratified by the Legislature XI of the National Assembly of the Socialist Republic of Vietnam in its 8<sup>th</sup> session on November 29, 2005.*

THE CHAIRMAN OF THE NATIONAL ASSEMBLY

NGUYEN VAN AN