

**VIETNAM**

**Industrial property Detailing on industrial designs**

Circular No. 29/2003/TT-BKHCN of November 5, 2003 guiding the carrying out of establishment procedures of industrial property rights in respect of industrial designs

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## **Chapter I GENERAL PROVISIONS**

### **1. Definition of terms**

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

- a) "The Decree" refers to Decree No. 63/CP of October 24, 1996 of the Government detailing the regulations on industrial property, as amended by Decree No. 06/2001/ND-CP of February 1, 2001 of the Government;
- b) "Application" refers to an application for granting a patent for an industrial design;
- c) "Applicant" refers to the subject under whose name the application is filed;
- d) "Industrial design registration procedures" refers to the procedures for establishment of industrial property rights in respect of industrial designs and other related procedures.

1.2. Other relevant terms shall be construed as defined in the Decree.

### **2. Certification of documents**

2.1. Certification of documents in the original

In the course of carrying out industrial design registration procedures, the original of any transactional document shall be certified by the very subject under whose name the document was made, in accordance with the following provisions:

- a) Where the subject, under whose name the document was made, is an individual, the signature and full name of such individual or his/her authorized representative shall be affixed in the document;
- b) Where the subject, under whose name the document was made, is an entity that is bound with the mandatory requirement to use its registered seals for the certification, the signature of the legal representative of the entity together with its seals shall be affixed in the document.

2.2. Certification of copy documents

a) Every copy document, which is created by any means of copying, shall be certified as the true copy of the original according to Point 2.2.b of this Circular to be usable as an official document in the process of carrying out the industrial design registration procedures.

b) A copy document shall be considered as a certified true copy when it contains the certification made by one of the following authorities: the Notaries Public; the People's Committees; and other relevant competent authorities; the subjects (all of the concerned) of the related transaction or the subjects' authorized representatives, under whose names the relevant

original document was made. Where a copy document consists of many pages, and its certification is subject to the registered seal, the certification may be made by affixing the seal on either each page or the consecutive pages.

### 2.3. Certification of translations

a) The Vietnamese translation of a document shall be a textual translation of the original and certified in compliance with Point 2.3.b of this Circular to be usable as an official document in the process of carrying out the industrial design registration procedures.

b) The translation of a document may be certified by one of the following manner:

- Certification of Notaries Public;
- Certification of the very subjects (all of the concerned) under whose names the document was made;
- Acknowledgement of the competent authority who takes the responsibility to examine the translation in performing the related procedures.

### **3. The persons entitled to carry out the industrial design registration procedures in the name of the subject**

3.1. Only those who are qualified under provisions of Points 3.2 and 3.3 of this Circular are entitled to carry out the industrial design registration procedures before the National Office of Intellectual Property and other related competent authorities in the name of the subject. The National Office of Intellectual Property and other related competent authorities shall only engage in the transaction with the qualified persons mentioned above, which is regarded as the official transaction with the subject concerned.

3.2. Where the subject is entitled to file the application and carry out the related procedures under provisions of Paragraphs 2 and 3.a, Article 15 of the Decree, the following persons may carry out the industrial design registration procedures before the National Office of Intellectual Property and other related competent authorities in the name of the subject:

- a) The individual, or his/her legal representative, who is the very subject concerned (where the subject is an individual);
- b) The legal representative of the subject, or an individual member of the subject authorized by the legal representative of the subject, or the head of the representative office or branch of the subject being authorized by the legal representative of the subject (where the subject is a legal person or any other entity);

c) The head of the representative office residing in Vietnam, getting the authorization to be the representative of the subject, where the subject is foreigner; or the legal representative of the subsidiary established in Vietnam with 100% investment capital owned by the subject, getting the authorization to be representative of the subject, where the subject is foreigner;

d) The person qualified under Points 3.2.a, 3.2.b, 3.2.c of this Circular and being one member of the group of individuals or belonging to one member of the group of legal persons or other entities standing all together in the name of the subject, where the subject consists of different individuals, legal persons or other entities, provided that such person gets the authorization from all of the other members to be the representative of the subject.

3.3. Where the subject authorizes an Industrial Property Agent to file the application and carry out the related procedures, including the case where the subject is bound with compulsory requirement to carry out such procedures through an Industrial Property Agent according to Paragraphs 3.b, Article 15 of the Decree, only the legal representative or the authorized representative of the Industrial Property Agent indicated by the subject in the Power of Attorney is entitled to carry out the procedures set forth in Point 3.1 of this Circular.

#### **4. Authorization in carrying out the industrial design registration procedures**

4.1. The authorization and the performance of the authorized actions in carrying out the industrial design registration procedures shall be conducted in compliance with the regulations of the Civil Code on civil contracts and authorization contracts, and the provisions of this Circular.

4.2. The authorization of any action in carrying out the industrial design registration procedures shall be made in writing (in the form of the Power of Attorney), in which at least the following information shall be included:

- a) The full name and full address of the authorizer;
- b) The full name and full address of the authorized;
- c) The scope of authorization (the authorized actions to be performed by the authorized in the name of the authorizer);
- d) The date of issue of the Power of Attorney;
- e) The signature(s), and/or seal(s), if any, of the issuer of Power of Attorney;
- f) The time limit of authorization.

Where the Power of Attorney does not indicate the time limit of authorization, its effect shall be regarded indefinite as far as the authorizer does not make a declaration of termination of the authorization.

4.3. The person to be authorized shall be either one of those who are entitled to carry out the industrial design registration procedures as provided in Point 3.2 of this Circular, or an Industrial Property Agent.

4.4. In carrying out the industrial design registration procedures under an authorization, the authorized is required to submit the Power of Attorney in the original. It is required to notify in writing the National Office of Intellectual Property and the related competent authorities of any change in the scope of authorization or the termination prior to the expiry of the authorization time limit, such change or termination is only regarded valid as from the date on which the competent authority receives the relevant notice.

4.5. Where the Power of Attorney covering various authorized actions in relation to the different procedures has been submitted to the National Office of Intellectual Property in the original, the authorized is required to indicate clearly the serial number and the submitting date of the dossier containing the original of such Power of Attorney, when performing the subsequent authorized actions.

## **Chapter II THE APPLICATION AND PROCESSING THE APPLICATION**

### **Section 1. THE APPLICATION**

#### **5. Formality requirements on the application**

5.1. The application shall be made in conformity with the following formality requirements:

- a) Unless those are permitted to be presented in other languages as provided in Points 5.2 and 5.3 of this Circular, all documents of the application shall be made in Vietnamese;
- b) The documents of the application shall be presented in vertical (except for drawings, pictures of the industrial design, which may be presented in horizontal), and on one side of A4-size paper (210mm x 297mm) with the margin of 20mm from every edge. This rule shall not be applied to the secondary materials, which originally have not been prepared to include in the application;
- c) Where a document is required to conform to a fixed form, the document

shall be prepared by filling in the appropriate blank fixed form;

- d) Where a document contains more than one page, every page of the document shall be numbered in Arabic numerals;
- e) All of the documents shall be presented clearly in typewriting and in hard-to-fade printing without any erasure and correction;
- f) The words and terms used in the application shall be presented in the conventional language; all signs, units of measurement, and fonts of electronic letters displayed in the application shall be in consistence with the regular standards of Vietnam;
- g) The application may be enclosed with the secondary materials like data-carrying electronic media supporting a part or the whole of documents of the application, which shall be presented in consistence with the relevant rules on the formality of the documents issued by the National Office of Intellectual Property.

5.2. The following documents may be made in the languages other than Vietnamese, however, their Vietnamese translation shall be accompanied therewith:

- a) The Power of Attorney;
- b) The documents evidencing the legitimacy of the right to file the application (e.g. deeds of inheritance; certificates or agreements on transfer of right to file the application, including the transfer of the right over the application having been filed; employment contracts or labor contracts, etc), where the applicant enjoyed that right from others;
- c) The documents evidencing the priority right (e.g. certificates of the copies of the application/the first applications issued by the receiving offices; certificates of exhibition/display of articles or the like; deeds of transfer of priority right where that right is transferred from others etc).

5.3. The following documents may be made in the languages other than Vietnamese, provided that their Vietnamese translation shall be required upon the request of the National Office of Intellectual Property:

- a) Copies of the first applications evidencing the enjoyment of the priority right;
- b) Other secondary materials supporting the application.

## **6. Substantive requirements on the application**

6.1. The application shall be in compliance with the unity requirements as provided in Paragraph 2, Article 11 of the Decree. The application is regarded satisfactory to the unity requirements when it comes within

one of the following cases:

Each application may only claim a patent for one industrial design of one product or one set of products and such industrial design may include different embodiments.

The different embodiments of an industrial design may be presented in different applications of an applicant, provided that in the subsequently filed application a citation that the industrial design claimed thereby is an embodiment of the industrial design claimed by an application having been previously filed, and the number and the filing date of the previously filed application shall be indicated. Where such citation is not included, the industrial design under claim of the subsequently filed application will be regarded lacking the novelty and not essentially different from the industrial design under claim of the previously filed application. Where such citation is included, the applicant may be granted one patent for all embodiments of the industrial design presented in such applications.

In this point, the terms shall be construed as follows:

- Product means any of articles, tools, equipment, means, etc, which can be manufactured by industrial method or handicraft and contains specific compositional features and functions, and can be independently put into circulation.
- Set of product means a group of two or more independent products, which are normally put in use together or to perform one common purpose.
- Different embodiments of an industrial design mean the variants of one industrial design displayed on a product or a set of products that are not essentially different from each other.

6.2. The application is required to contain the following documents:

- a) The Request of Industrial Design Patent, which shall be made in conformity with the form provided in the appendix of this Circular ("the Request");
- b) The Specification of the claimed industrial design (hereafter "the Specification");
- c) The set of photos or drawings of the claimed industrial design, in 5 copies;
- d) The Power of Attorney (where the application is filed through an Industrial Property Agent);
- e) The copy of the first application(s) or of the document evidencing the exhibition/display of the claimed industrial design if the application is subject to the claim of priority under the international treaties;
- f) The voucher of payment of the application filing fee, the application publication fee, and the priority right claiming fee (if any), the service

charge of substantive examination, the service charge of industrial design classification (where the applicant did not complete properly the classification of the claimed industrial design described in the application).

6.3. The documents listed in Point 6.2 of this Circular shall be filed altogether at the same time. The particular following documents may be submitted within 3 months from the filing date of the application:

- a) The Vietnamese translation version of any documents prescribed in Points 6.2.b, provided that the English version of such documents has been included in the application;
- b) The original version of the document prescribed in Point 6.2.d of this Circular (including the Vietnamese translation thereof), provided that the copy version of such document has been included in the application;
- c) The documents prescribed in Point 6.2.e of this Circular, (including the Vietnamese translation thereof when necessary upon the request of the National Office of Intellectual Property).

6.4. Where there exist doubts (information, evidence) about the truthfulness of the information declared in the application, the National Office of Intellectual Property may request the applicants to submit, within one month from the date of request, the documents to verify such doubtful information, particularly those of the following:

- a) Documents evidencing the legitimacy of the right to file the application where the applicant enjoyed this right from others (for example, certificate of inheritance, or deed or agreement on transfer of right to file the application; or employment contract, labor contract etc);
- b) Documents evidencing the legitimacy of the ownership over the trademark or trade name where the claimed industrial design contains such trademark or trade name.

6.5. In the Request, the applicant shall indicate the classification index of the claimed industrial design in consistence with the International Classification of Industrial Designs (according to the Locarno Agreement). Where the applicant did not indicate or indicated incorrectly the classification index as prescribed, the National Office of Intellectual Property shall automatically conduct the service of classification of industrial design and the applicant shall pay the prescribed charge for such service.

6.6. The Specification:

- a) The Specification shall include the following information:
- The name of the product bearing the claimed industrial design,
  - The use domain of the product bearing the claimed industrial design,
  - The industrial designs having been known with the least differences in comparison with the claimed industrial design,
  - The list of photos and drawings,
  - The Description of the claimed industrial design (hereafter "The Description"),
  - The Claims.

b) The Description shall present all the shaping features which are essential to the claimed industrial design, and clarify those of shaping features newly created by the author, which differentiate the claimed industrial design from those having been known with the least differences and conform to the illustration of photos and drawings.

Where the claimed industrial design consists of different embodiments, the Description shall present all embodiments and clarify the features of the derivative embodiments that are distinct from those of the basic embodiment.

Where the claimed industrial design is design of a set of products, the Description shall fully present design of each product in the set.

c) The Claims are used to determine the scope (volume) of protection given to the claimed industrial design. The Claims shall specify the claimed shaping features, namely, the new features distinct from the similar industrial designs having been known.

The claimed shaping features shall be presented in the following order: shape features and/or line features and/or the inter-relation between the above-mentioned features and/or color (if any).

6.7. The set of photos or drawings is used to expose fully the shaping features of the claimed industrial design in consistence with the Description and the Claims and in conformity with the following requirements:

a) The photos/drawings shall be clear and sharp, on which there shall not include the image of any product other than that bearing the claimed industrial design.

b) All photos/drawings shall be made in the same scale. The size of each photo or drawing shall be not smaller than 90 mm x 120 mm and not larger than 210 mm x 297 mm.

c) Each photo or drawing shall be presented or stuck on white paper sheets of A4 size (210 mm x 297 mm) and numbered in the serial order in consistent with Point 6.6.a of this Circular.

- d) The set of photos/drawings shall include perspective pictures of the product bearing the claimed industrial design.
- e) Consistently with the Claims, the projection images with different cross-sections of the claimed industrial design shall be included in the set of photos/drawings by which the new shaping features of the claimed industrial design are clearly exposed.
- f) Each derivative embodiment of the claimed industrial design shall be enclosed with the photos or drawings showing clearly the features of such embodiment that differentiates from those of the basic embodiment.
- g) For a product with lids or a product with foldable characteristics (e.g. wardrobe, suitcase etc), the photos of the product in the being-opened state shall be made available.
- h) For a set of products, the perspective pictures of the whole set of products and projection images of each separate product of the set shall be made available.

6.8. The requirements in details concerning the Specification and the set of photos/drawings of the claimed industrial design shall be guided by the National Office of Intellectual Property.

## **Section 2. FILING AND RECEIVING THE APPLICATION**

### **7. Filing the application**

The application may be filed with the National Office of Intellectual Property or other receiving offices set up by the National Office of Intellectual Property. The application may also be sent via registered mail to the aforesaid receiving offices.

### **8. Receiving the application**

8.1. Upon receiving the application, the National Office of Intellectual Property shall conduct the following acts:

- a) Checking the list of documents declared in the Request;
- b) Verifying the incompatibility between the documents listed in the Request and the documents actually contained in the application;
- c) Preliminarily examining the application to decide whether to receive the application according to Point 8.2 of this Circular, and if received, affixing the receiving stamp certifying the filing date of the application on the Request;
- d) Issuing the Receipt of Application to the applicant, in which the stamp certifying the filing date and number of the application, the checklist of documents, the full name and signature of the official in charge of

receiving the application, shall be included.

8.2. The National Office of Intellectual Property shall not receive the application lacking any of the required documents as follows:

- a) The Request, in which the name and address of the applicant shall be declared;
- b) The Specification, in which the Claims shall be included;
- c) The set of photos/drawings of the claimed industrial design;
- d) The voucher of payment of the application filing fee.

8.3. Where the application is not accepted, within 15 days from the date of receiving the application, the National Office of Intellectual Property shall issue the Notice of Refusal to the applicant, in which the reasons of the refusal and the period of two months from the date of notification for the applicant to correct the defects of his/her application shall be stated clearly.

Where the applicant submit in full the required documents as provided in Point 8.2 of this Circular, the receiving date of his/her application shall be the date of the full submission.

Where the application is rejected, the National Office of Intellectual Property shall not return the documents of the application to the applicant, and refund the paid charges and fees in accordance with the procedures of refunding charges and fees provided in this Circular.

### **Section 3. FORMALITY EXAMINATION OF THE APPLICATION**

#### **9. Purposes and contents of formality examination**

Formality examination of the application is to examine the conformity of the application with formality requirements on the application, served as the basis for conclusion on whether the application is officially acceptable.

An officially accepted application shall be continued in further consideration. An officially unaccepted application shall be rejected (by stopping any further consideration).

#### **10. The officially accepted application**

10.1. The application shall be considered being officially accepted if it does not fall into one of the following cases:

- a) The application is made in the language other than Vietnamese, except for the cases provided in Points 5.2 and 5.3 of this Circular;
- b) The Request does not contain fully required information on the author

or the applicant and/or his/her representative, or the signature(s) and/or seals of the applicant and/or his/her representative;

c) There exist grounds to affirm that the applicant has no legal right to file the application;

d) The application has been filed not pursuant to provisions of Article 15 of the Decree;

e) The Specification is made in English and the applicant fails to submit its Vietnamese translation within the time limit provided in Point 6.3 of this Circular;

f) The Power of Attorney has not been submitted within the time limit provided in Point 6.3 of this Circular;

g) The application remains incomplete with the defects affecting the validity of the application as provided in Point 11 of this Circular, and regardless of the request of the National Office of Intellectual Property, the applicant fails to conduct the correction or the correction of the defects is unsatisfactory as requested;

h) There exist grounds to affirm promptly that the claimed object described in the application does not fall into the categories of patentable subject matters according to provisions of Article 787 of the Civil Code and Paragraph 3, Article 5 of the Decree.

10.2. Where the application containing multiple claimed objects and falling into the cases provided in Points 10.1.h, 11.1.a, 11.1.b, 11.1.e of this Circular, if the defects existed in the application are not related to all the claimed objects described in the application, the application shall be regarded being officially unaccepted in part (for the object related to the defects), and for the claimed objects unrelated to the defects, the application is still regarded being officially accepted.

## **11. Handling defects of the application in period of formality examination**

11.1. The following defects of the application may be corrected in the period of formality examination:

a) The number of copies of a document included in the application is not enough as required;

b) The application does not meet the unity requirements;

c) The application does not meet the requirements on the physical presentation formality;

d) The documents of the application are of inconsistency in information on the applicant, or contain erasures, or are not certified as required;

e) The related fees and charges have not yet been paid in full as provided in Point 6.2.f of this Circular.

11.2. The applicant is required to correct completely the above-mentioned defects within the period of 2 months from the date of notification.

#### **12. Determination of the filing date**

The filing date of the application is the date on which the application arrives at the National Office of Intellectual Property, inscribed in the receiving stamp affixed on the Request.

#### **13. Determination of the priority date**

13.1. Where the application does not contain the claim of priority or the claim of priority is not accepted by the National Office of Intellectual Property, the priority date shall be the filing date of the application.

13.2. Where the application contains the claim of priority and such claim is accepted by the National Office of Intellectual Property, the priority date is the date stated in the claim of priority.

#### **14. Notice of official acceptance of the application**

Where the application is considered being officially accepted, the National Office of Intellectual Property shall issue the Notice of Official Acceptance of the Application to the applicant, in which the name and address of the applicant, the name of the Industrial Property Agent (where the application is filed through an Industrial Property Agent), the title(s) of the claimed object(s) described in the application, the filing date, the serial number, and the priority date of the application shall be included. Where the claim of priority is rejected, the reasons of the rejection shall be clearly stated in the notice.

#### **15. Notice of official refusal of the application**

Where the application is considered being officially unaccepted, the National Office of Intellectual Property shall issue the Notice of Intention to Refuse the Application to the applicant, in which the defects making the application unaccepted and the period of two months from the date of notification for the applicant to present his/her opinions shall be clearly stated.

Where the applicant fails to provide his/her opinions on the intention of refusal of the application, or his/her opinions are unjustified, the National Office of Intellectual Property shall issue the Notice of Official Refusal of the Application and, at the request of the applicant, refund the fees and charges having been paid for the procedures and services

subsequent to the formality examination of the application.

#### **16. Time limit of formality examination**

16.1. The time limit of formality examination of the application shall be one month counting from the filing date of the application. In regard with the application completed by the late submission of supplementary documents as provided in Point 6.3 of this Circular, the time limit of formality examination shall be one month counting from the date of full submission.

16.2. In the course of examining the formality of the application, if the applicant, either on his/her own initiative or at the request of the National Office of Intellectual Property, make the amendment and/or supplement to the documents of the application, the time limit of formality examination of the application may be prolonged for a period of 15 days. Where the application is amended and/or supplemented at the request of the National Office of Intellectual Property, the time given for the applicant to amend and/or supplement the application shall not be added up in determination of the time limit of formality examination in respect of the application.

#### **Section 4. PUBLICATION OF THE APPLICATION**

##### **17. Publication of the officially accepted application**

The application having been officially accepted shall be published by the National Office of Intellectual Property on the Industrial Property Gazette. The applicant shall pay the prescribed fee for publication of the application.

##### **18. Time limit for publishing the application**

The application shall be published within the second month counting from the date on which the application is officially accepted.

##### **19. Contents of the application to be published**

Information pertaining to the officially accepted application to be published in the Industrial Property Gazette shall include: all information concerning the officially accepted application stated in the Notice of Official Acceptance of the Application; information on the assignment of the application and the division of the application, if any, etc; some selected photos/drawings describing the claimed industrial design described in the application.

**20. Accession to details of information on the officially accepted application**

Everyone may by oneself access to information on the nature of the claimed object(s) described in the officially accepted application, or may, by payment of the prescribed service charge, request the National Office of Intellectual Property to supply such information.

**Section 5. SUBSTANTIVE EXAMINATION OF THE APPLICATION**

**21. Purposes of substantive examination**

Substantive examination is to evaluate the patentability of the claimed object(s) described in the application upon the patent criteria, and determine the relevant scope (volume) of protection.

**22. Use of the search results in the course of substantive examination**

22.1. When conducting substantive examination, the National Office of Intellectual Property shall conduct the search of information in the mandatory minimum sources as prescribed in Point 33.2 of this Circular for the purpose of making the checking-comparison and evaluation of the claimed object(s) described in the application based on the prescribed patent criteria.

22.2. In conducting substantive examination in respect of the application containing the claim of priority, the National Office of Intellectual Property may use the information search report and/or the examination results of the corresponding application(s) having been filed in other countries. The applicant may provide the National Office of Intellectual Property with the following documents to support the substantive examination of his/her application:

- a) The information search report and/or the examination results of other application(s) having been filed in other countries for the same claimed object(s);
- b) The copies of the patents and/or other Titles of Protection having been granted on the basis of the corresponding applications having been filed in other countries for the same claimed object(s).

**23. Consideration of opinions provided by the third parties**

In the course of substantive examination of the application, the National Office of Intellectual Property shall take into consideration of the *pros* and *cons* opinions provided by the third parties, if any, on the granting

of the Title of Protection. The National Office of Intellectual Property shall notify the third parties providing opinions of whether their opinions are accepted; and when not accepted, the reasons of thereof shall be stated clearly.

**24. Request of correction of the formality defects and/or explanation of the contents of the application**

24.1. In the course of substantive examination of the application, the National Office of Intellectual Property may request the applicant to explain the contents of the documents of the application and/or to correct formality defects existed in the application. Where the applicant fails to satisfy such request, his/her application shall be considered withdrawn and stopped further examining.

24.2. The National Office of Intellectual Property may not request the applicant to supply information beyond the scope of the nature of the claimed object(s) described in his/her application, and particularly, shall not request the applicant to supply information that he/she wants to keep secret.

24.3. All amendments and supplements to the documents of the application shall be made by the applicant himself/herself. The National Office of Intellectual Property is not allowed to make directly any of aforesaid amendments and/or supplements.

**25. Suspension of substantive examination**

25.1. In the following cases the substantive examination shall be suspended:

a) The application fails to disclose clearly the nature of the claimed object: The documents describing the nature of the claimed object such as the Specification, the Claims, or Drawings (or photos) lack the necessary information to such an extent that it is impossible to determine the contents of the nature of the claimed object, or information provided by such documents is inconsistent to such an extent that it is impossible to identify the claimed object.

b) The claimed object is inappropriate to claim an industrial design patent or of the kind of unpatentable subject matters as provided in Article 787 of the Civil Code and Paragraph 3, Article 5 of the Decree;

c) The applicant requested suspension of substantive examination or declared withdrawal or abandonment of his/her application.

25.2. The National Office of Intellectual Property shall notify the applicant of the suspension of substantive examination and the reasons thereof in accordance with the procedures applied to notification of substantive examination results (except for the suspension made at the request of the applicant).

**26. Appeal on suspension of substantive examination; restoration of substantive examination**

26.1. The applicant is entitled to take an appeal on the suspension of substantive examination before the National Office of Intellectual Property and the latter shall have responsibility to settle the appeal in accordance with the procedures provided in Section 3, Chapter 4 of this Circular.

26.2. Where the settlement affirms that the appeal of the applicant is justified, the National Office of Intellectual Property shall restore the substantive examination in respect of the related application. In that case, the National Office of Intellectual Property may not be allowed to prolong the prescribed time limit of the substantive examination in respect of that application.

**27. Contents and procedures of evaluation of patentability of the claimed objects upon the protection conditions (patent criteria)**

27.1. Evaluation of the claimed objects upon the patent criteria is to determine whether the claimed objects described in the application is appropriate to claim an industrial design patent, and, where appropriate, to evaluate the patentability of the claimed objects relying on each patent criterion.

27.2. Evaluation of the claimed objects upon the patent criteria shall be conducted on the basis of one by one claimed object (where the application contains more than one claimed object and meets the unity requirements). Each claimed object shall be evaluated on the basis of one by one patent criterion as specified in Chapter 3 of this Circular.

The evaluation shall be conducted on the basis of one by one product (where the application refers to a set of products); for the application referring to different embodiments of the claimed industrial design, the evaluation shall be conducted first from the basic embodiment.

27.3. The evaluation of each claimed object shall be completed when:  
a) Finding the reason for the conclusion that the claimed object fails

to meet one of the patent criteria (in this case, the substantive examination is completed with the conclusion that the claimed object does not meet the patent criteria).

b) Finding no reason for the conclusion that the claimed object fails to meet any of the patent criteria (in this case, the substantive examination is completed with the conclusion that the claimed object meets the patent criteria).

## **28. Notification of substantive examination results**

28.1. The National Office of Intellectual Property shall notify the applicant of substantive examination results, in which the conclusion on whether the claimed object(s) meeting the patent criteria shall be stated clearly.

28.2. Where the claimed object described in the application is inappropriate to claim an industrial design patent, or even though appropriate, it fails to meet the patent criteria, in the Notice of Substantive Examination Results, the intention to refuse to grant the Title of Protection to the claimed object together with the reasons thereof and the period of two months from the date of notification for the applicant to provide his/her opinions shall be stated clearly; where the claimed scope (volume) of protection is regarded too broad, the arguments for that and the request of narrowing down the claimed scope (volume) of protection shall be stated clearly in the notice.

28.3. Where the claimed object described in the application meets the patent criteria while the application still remains defective, in the Notice of Substantive Examination Results the defects of the application and the period of two months from the date of notification provided for the applicant to provide his/her opinions or to correct the defects shall be stated clearly. Additionally, the Notice shall contain the statement forewarning the applicant that if he/she fails to correct completely the defects or provide justifiable arguments of opposition, his/her application shall be refused to grant the Title of Protection.

28.4. Where the claimed object meets the patent criteria, or, for the cases provided in Points 29.2 and 29.3 of this Circular, the applicant has narrowed down the scope (volume) of protection and made the claimed object satisfactory with the patent criteria and/or corrected the defects satisfactorily and/or provided with justified arguments of opposition, in the Notice of Substantive Examination Results, a period given to the

applicant to pay the fees for publication of the Title of Protection, for entry of the National Register, and for issue of the Title of Protection shall be determined. The period given to the applicant stipulated in this point is one month counting from the date on which the applicant receives the Notice or two months counting from the date of issue of the Notice, whichever is earlier.

28.5. If within the determined period the applicant fails to correct or corrected unsatisfactorily the defects existed in the application and/or fails to provide or provided with unjustifiable arguments of opposition, the National Office of Intellectual Property shall officially refuse to grant the Title of Protection in respect of the related application. Where, within the determined period stated in the Notice of Substantive Examination Results as provided in Point 28.4 of this Circular, the applicant fails to pay the required fees for publication, for entry of the National Register, and for issue of the Title of Protection, the National Office of Intellectual Property shall refuse to grant the Title of Protection in respect of the related application.

28.6. In regard with the application containing multiple claimed objects, where only some of those fall into the cases provided in Point 28.5 of this Circular, the refusal of granting of the Title of Protection shall only apply to the such objects (namely, the Title of Protection is still granted to the other objects described in the application).

## **29. Time limit of substantive examination**

29.1. The time limit for substantive examination of the application is 6 months counting from the date of publication of the application.

29.2. In the course of substantive examination, if the applicant, on his/her own initiative or at the request of the National Office of Intellectual Property, amends and/or supplements documents to the application, the time limit of substantive examination may be prolonged for a period of one month. Where the amendments and/or supplements of documents are made at the request of the National Office of Intellectual Property, the time given to the applicant to amend and/or supplement documents shall not be added up in determination of the time limit of substantive examination.

29.3. Before the expiry of the time limit of substantive examination, the National Office of Intellectual Property shall provide the Notice of Substantive Examination Results to the applicant according to Point

28 of this Circular.

## **Section 6. AMENDMENT OF THE APPLICATION**

### **30. Amendment, supplementation, division, transfer of the application**

30.1. Before the National Office of Intellectual Property issues any of the following: the Notice of Refusal of the Application, the Notice of Refusal to Grant the Title of Protection, the Decision to Grant the Title of Protection, the applicant may, on his/her own initiative or at the request of the National Office of Intellectual Property, make amendments and/or supplements to the documents of the application, including the division of the application (i.e. the separation of one or some claimed industrial designs from the application having been filed).

The applicant shall submit the appropriate amended documents together with a written statement explaining the amended contents in comparison with those existing before the amendment, and pay the prescribed fee for amendment.

30.2. The amendment and/or supplementation of the application shall not expand the scope (volume) of protection beyond the contents disclosed in the Description, nor change the nature of the claimed objects in the application. If the amendment or supplementation results in the expansion of the scope (volume) of protection and/or the change in nature of the claimed object(s), the applicant shall file new application(s) for such expansion and/or change and perform all related procedures as prescribed from the beginning.

30.3. The divisional application(s) shall be retained the filing date and the priority date(s) of the original application. For each divisional application, the applicant shall pay the application filing fee and other fees and charges for the procedures that proceed independently from the original application, and needs not to pay any additional fee for the claim of priority. The divisional applications shall be examined in formality and processed in the unaccomplished procedures of the original application. The date on which the request of division of the application is filed shall be regarded as the date of amendment of the application for the purpose of determination of the time limits of examination of the application. The original application (after division) shall be processed further in the normal procedures as prescribed and the applicant shall pay the fee for amendment of the application.

30.4. The applicant may request recording of the change in his/her name, address, or the replacement of the applicant (where the application is assigned, or the right over the application is transferred by inheritance or by merger or separation of the legal entities or upon the court's judgments etc). The request of recording of the change shall be made in writing and the requester shall pay the prescribed fee for the recording. In one written request, the applicant may request recording of the change in the same contents relating to more than one application, provided that he/she pays the prescribed fees for recording of the change in a lump sum on the basis of total number of the related applications.

### **Chapter III EVALUATION OF CLAIMED OBJECTS UPON THE PATENT CRITERIA**

#### **31. Evaluation of the conformity of the claimed object(s) described in the application to the industrial design patent criteria**

31.1. The outer shape of a product, namely the object which can be protected under the title of industrial design, is the accumulation of necessary and adequate aesthetic characteristics on shapes, lines, and color which determine the appearance of the product.

31.2. The claimed object described in the application shall not be considered as the outer shape of a product if it is the inside shape (shape of a part invisible in the process of use) of the product, and therefore, such object shall be considered not conforming to the industrial design patent criteria.

#### **32. Evaluation of the used-as-pattern capability of the claimed industrial design**

32.1. According to Paragraph 2, Article 5 of the Decree, an industrial design is considered capable of using as a pattern for manufacturing industrial and/or handicraft products if it is possible to manufacture massively the products whose appearance is such industrial design.

32.2. In the following cases, a claimed object shall be considered having no used-as-pattern capability for manufacture of the products with the appearance identical to such claimed object:

- a) The claimed object described in the application is an instable shape of the product (for products with instable shapes).
- b) It is only possible to manufacture the product with the appearance identical to the claimed object by using special skills, or it is impossible to perform repeatedly the manufacture of the product with the appearance

identical to the claimed object as described in the application.

### **33. Evaluation of the novelty of the claimed industrial design**

33.1. A claimed industrial design shall be considered having the novelty where it meets the criteria prescribed in Paragraph 1, Article 5 of the Decree.

#### 33.2 Mandatory minimum sources of information

a) In order to evaluate the novelty of the claimed industrial design described in the application, it shall be conducted the search at least in the mandatory minimum sources of information as follows:

- All of those applications for industrial design patent having been published by the National Office of Intellectual Property, which have the priority date earlier than that of the application;
- All of those applications for industrial design patent and/or industrial design patents published or granted by the organizations or other nations within the period of 25 years prior to the priority date of the application, which are available in the patent database stored in the Industrial Design Database located in the National Office of Intellectual Property;
- Other sources of information concerning industrial designs that are collected and stored by the National Office of Intellectual Property.

b) When necessary and possible, the search may be extended beyond the mandatory minimum sources of information.

#### 33.3. The basic shaping features of industrial design

a) The basic shaping features of an industrial design are specific shapes, lines, color, positional correlation, dimensional correlation, and other elements constituting an accumulation that is necessary and adequate to determine the nature of the industrial design.

b) The following elements shall not be considered as basic shaping features of industrial design:

- The shapes or the lines are solely determined by the technical functions or utility functions of the product; for example, the flat and even shape of a data disk is determined by the relative movement between the disk and the reader, etc;
- The element whose presence in the accumulation of elements is not effective enough to get an aesthetical impression (the impression on the product seems unchanged with or without the presence of such element); for example, the change in a conventional shape or a conventional line as far as such change is not effective enough to be recognized, and therefore, the shape or the line after the change is still recognized as that existed before

the change;

- The words and/or pictures that are affixed or stuck on a product only for the purpose of performance of trademark functions or performance of communication functions such as instructions on origin, properties, composition, utility, usage etc of the product; for example, the words used in the label of product.

#### 33.4. Information search, comparable design, and Search Report

a) The purpose of information search is to find industrial designs identical or most similar to the industrial design described in the application, of which:

- Two industrial designs are considered identical if they are of the same accumulation of the basic shaping features and identical in all of their basic shaping features;

- Two industrial designs are considered similar if they are of the same accumulation of the basic shaping features and identical in most of their basic shaping features.

b) Comparable design

Comparable industrial design is an industrial design identical and/or most similar (containing the largest number of identical basic shaping features pertaining to the determined accumulation) to the industrial design described in the application.

c) Search Report

Results of the information search shall be presented in the Search Report, which shall indicate clearly search field, search scope and results collected therein (by listing all the comparable industrial designs having been found and specifying the sources of publication or information and the date of publication or disclosure), the names of the search report makers (or the searchers).

#### 33.5 Conclusion on the novelty of the claimed industrial design

a) In order to have grounds for the conclusion on whether the industrial design described in the application has the novelty, it shall be conducted the comparison between the accumulation of basic shaping features of the claimed industrial design and that of comparable industrial design(s).

b) The industrial design described in the application shall be considered as having the novelty if:

- No comparable industrial design is found in the minimum sources of information; or

- Although a comparable industrial design is found, the claimed industrial design described in the application contains at least one basic shaping

feature not present in the accumulation of basic shaping features of the comparable industrial design(s), and

- The claimed industrial design is not the widely known outer shape of a product (shall not be one of the following: the positional rearrangement or the assembly or the combination of the features of an industrial design having been known or bearing the natural shape of trees, flowers, fruits, animals, etc; images of the widely known geometric shapes (for examples: circle, ellipse, triangle, square, rectangle, even polygon, prisms with cross-sections being the aforesaid shapes etc); the shape of the product or the work well-known in Vietnam or the world (for examples: Tortoise Tower, statue of Happiness-Wealth-Longevity, Eiffel Tower etc); the designs bearing only aesthetic value such as sculptural works, pictures, statues etc).

#### **34. Conclusion on the patentability; determination of the scope (volume) of protection**

34.1. Where there is no ground to affirm that the claimed industrial design described in the application fails to meet at least one of the patent criteria, the National Office of Intellectual Property shall render the conclusion that such industrial design meets fully the patent criteria (being adequately qualified for granting an industrial design patent). Otherwise, the National Office of Intellectual Property shall render the conclusion that the claimed industrial design does not meet the patent criteria and refuse to grant an industrial design patent for the claimed industrial design.

34.2. Where the claimed industrial design meets fully the patent criteria, the scope (volume) of protection shall be determined by the Claims, in which the distinctive shaping features of such industrial design shall be specified with the illustration of photos/drawings.

### **Chapter IV GRANTING, REGISTRATION, APPEALS, TERMINATION, INVALIDATION OF THE TITLE OF PROTECTION**

#### **Section 1. GRANTING AND REISSUE OF THE TITLE OF PROTECTION AND ITS DUPLICATES**

#### **35. Granting of the Title of Protection**

35.1. Within 10 days as from the date on which the applicant pay in full and in time the charges and fees as provided in Point 28.4 of this Circular, the National Office of Intellectual Property shall carry out the procedures of granting of the Title of Protection according to the provisions of

Articles 23 and 26 of the Decree.

After the Title of Protection has been granted, if any error existed therein is found, the owner of the Title of Protection may request the National Office of Intellectual Property to correct the granted Title of Protection. Where the applicant caused the error, the owner of Title of Protection is obliged to pay the charge for the amendment of the Title of Protection. Where the National Office of Intellectual Property caused the error, the owner of Title of Protection is free from payment of any additional fee for the correction. The above-said correction shall not lead to the change in nature and object(s) and scope (volume) of the protection.

35.2. As from the date on which the National Office of Intellectual Property issues the decision to grant the Title of Protection, the applicant may not transfer his/her application to others. Where the contract on transfer of the application concluded by the applicant and others has not been completed the registration procedures at the National Office of Intellectual Property, such contract shall be transformed into the contract on transfer of industrial design patent on the basis of the granted Title of Protection.

### **36. Right to request issue or reissue of duplicates of the Title of Protection; reissue of the Title of Protection**

36.1. Where the industrial property rights to the industrial design are of co-ownership, those co-owners who may not receive the Title of Protection in the original issued by the National Office of Intellectual Property according to Paragraph 3, Article 26 of the Decree may request the National Office of Intellectual Property to issue the duplicates of the Title of Protection, provided that they pay the prescribed fee for issue of the duplicates.

36.2. In the following cases, the industrial property owner who has been granted the Title of Protection (including the duplicate thereof) may request the National Office of Intellectual Property to reissue the Title of Protection and/or the duplicate thereof, provided that he/she pays the prescribed fee for issue of the Title of Protection:

- a) The Title of Protection or its duplicate was lost, provided that the justified reasons are presented;
- b) The Title of Protection or its duplicate was damaged (e.g. it was tattered, dirty, faded etc to such an extent that it is impossible to put in use), provided that the Title of Protection or its duplicate(s) being damaged shall be submitted.

**37. Dossier of request of issue or reissue of duplicates of the Title of Protection; reissue of the Title of Protection**

The dossier of request of issue or reissue of duplicate(s) of the Title of Protection or reissue of the Title of Protection shall be included the following documents:

- a) The Request of issue/re-issuance of the duplicate(s) of the Title of Protection or Request of reissue of the Title of Protection (it should be made in consistence with the form provided in the appendix of this Circular);
- b) The writing statement on the reasons of the loss or the damage caused to the Title of Protection and/or its duplicate(s) (for the request of reissue of the Title of Protection or its duplicate(s));
- c) The Power of Attorney (for the case of filing the request through an Industrial Property Agent);
- d) The voucher of payment of the fees for issue of the Title of Protection and/or duplicate(s).

**38. Handling of dossier of request of issue/reissue of duplicates of the Title of Protection or reissue of the Title of Protection**

38.1. The National Office of Intellectual Property shall examine the dossier of the request of issue/reissue of duplicate(s) of the Title of Protection or reissue of the Title of Protection within a period of one month from the date of receiving the request. Where the dossier of the request conforms to the above-mentioned requirements, the National Office of Intellectual Property shall render the decision to issue/reissue the duplicates of the Title of Protection or reissue the Title of Protection and record the issuance in the appropriate list of Titles of Protection in the National Register.

38.2. The contents of the duplicate of the Title of Protection shall include all information described in the respective Title of Protection. The contents of the reissued version of the Title of Protection and/or its duplicate shall include all information described in the respective original of the Title of Protection or its duplicate and shall be presented together with the indication of "duplicate" or "reissued version", appropriately.

38.3. Where the dossier of the request fails to comply with the provisions of Point 37 of this Circular, the National Office of Intellectual Property shall render the notice of refusal to issue the duplicate(s) or refusal

to reissue the Title of Protection, in which the reasons of the refusal shall be clearly stated.

## **Section 2. NATIONAL REGISTRATION AND PUBLICATION OF DECISION ON GRANTING THE TITLE OF PROTECTION**

### **39. National Register of Industrial Designs**

39.1. The National Register ("the Register") of Industrial Designs is the official and public database containing adequately information on the legal status of the industrial property rights having been established and recognized by the State in respect of the patented industrial designs.

39.2. The Register includes the items corresponding to those presented in each Title of Protection, each item contains information on the Title of Protection (serial number, granting date; name(s) of the protected object(s), scope (volume) of protection, term of validity; name(s) and address of the owner(s), name(s) of author(s)); and on the relevant application for the Title of Protection (serial number, filing date, priority date, name of the Industrial Property Agent, if any); and on the amendment of the Title of Protection, the validity of the Title of Protection (validity maintenance, termination, invalidation); and on the transfer of ownership of or transfer of the right to use the patented industrial design; and on serial numbers, date of issue, name(s) of the holder(s) of the duplicate(s) or of the reissued version of the Title of Protection, appropriately.

39.3. The National Register shall be made and preserved by the National Office of Intellectual Property in the forms of paper or electronics or others. Any person may conduct the search on the Electronic Register (when available) or request the National Office of Intellectual Property to provide the partial copy of the National Register (i.e. the extract copy of the selected items in the National Register). The requester of the partial copy of the Register shall pay the prescribed charge for that copy service.

### **40. Publication of decision on granting the Title of Protection**

Every granted Title of Protection shall be published by the National Office of Intellectual Property in the Industrial Property Gazette within the second month from the date of issue of the relevant decision. The applicant shall pay the described fee for publication.

Information to be published includes the contents of the relevant decision,

one or several photos or drawings describing the protected industrial design.

### **Section 3. APPEALS RELATING TO THE PROCEDURES OF GRANTING THE TITLES OF PROTECTION**

#### **41. Persons entitled to appeal, object and time limit of appeal**

41.1. Those persons who are entitled to appeal under Paragraph 1, Article 27 of the Decree, within the time limits given for appeals provided in Paragraph 3, Article 27 of the Decree, may initiate the proceedings of appeals on the final notices of official refusal and/or the decisions related to the registration of industrial designs issued by the National Office of Intellectual Property.

41.2. The time limit for the first appeal set forth in Paragraph 3, Article 27 of the Decree, in order to be consistent with Article 31 of the Law on Complaints and Denunciations, shall be 90 days counting from the date on which the person entitled to appeal receives or knows the relevant notice or decision of the National Office of Intellectual Property on refusal to accept the application, granting or refusal to grant the Title of Protection in question.

#### **42. Dossier of appeal**

##### **42.1. General requirements**

The dossier of appeal shall be made in compliance with the formality requirements set forth in Points from 5.1.a to 5.1.e of this Circular. Each dossier of appeal shall refer to one appealed decision or notice. One dossier of appeal may refer to a number of decisions or notices where such decisions and notices are subject to same contents and arguments of appeal, provided that the appellant pays the prescribed charge for appeal on the basis of each appealed decision or notice.

42.2. The dossier of appeal shall include:

- a) The Declaration of appeal, made in consistence with the form provided in the appendix of this Circular;
- b) The copy of the appealed decision or notice;
- c) The copy of the first settlement decision on the appeal (applicable to the dossier of the second appeal);
- d) Evidence supporting the arguments of appeal (when necessary);
- e) The Power of Attorney (where appeal is lodged through an Industrial Property Agent);

f) The voucher of payment of charge for appeal.

42.3. Evidence is any document (proof) or article (material evidence), which could be used to prove or clarify the arguments of appeal.

Evidence shall be presented in accordance with the following requirements:  
a) Evidence may be a document made in foreign language, provided that its Vietnamese translation shall be provided at the request of the competent authorities;

b) Where evidence is a document made by individual(s) or organization(s) having no seals, or made under the name(s) of foreign individual(s) or organization(s), such document shall be subject to the signature certification of the Notaries Public or other authority having competence of signature certification;

c) Where evidence is an information-carrying object (publication, videotape, etc), it is required to specify the source and date of issuance and/or date of publication of such object, and the source and date of publication of information contained in such object;

d) Material evidence shall be accompanied with the clear description of its features directly related to the contents of the appeal.

#### **43. Responsibility of appellant**

The appellant shall have responsibility to ensure the truthfulness in provision of evidence and be liable for any consequences caused by his provision of untruthful evidence.

#### **44. Withdrawal of appeal**

44.1. At any time during the appeal proceedings, the appellant may make a written statement on withdrawal of the appeal. Where the withdrawal of the appeal is carried out through an Industrial Property Agent, the authorization of withdrawal of the appeal shall be clearly stated in the relevant Power of Attorney.

44.2. Where an appeal was withdrawn, the dossier of the appeal shall not be returned to the appellant and the appellant shall not be refunded the paid charge for the appeal.

#### **45. Handling of appeal**

45.1. Within 10 days after receiving the dossier of appeal, the competent authority being in charge of dealing with the appeal shall examine the dossier of appeal on the basis of the prescribed formality requirements, and then, notify in writing the appellant of whether the dossier is accepted

for consideration, in which the date of receiving the dossier and/or the reasons of refusal to accept the dossier shall be clearly stated.

45.2. The dossier of appeal shall not be accepted for consideration in the following cases:

- a) The appellant is not entitled to appeal;
- b) The dossier of appeal is filed after expiration of the prescribed time limit for appeal;
- c) The dossier of appeal fails to meet the above-mentioned requirements.

#### **46. The related third parties**

46.1. Where a dossier of appeal is accepted for consideration, the competent authority shall notify in writing those persons who have the rights and interests directly related to the dispute ("related third parties") of contents of the appeal, and request them to provide their own opinions within a determined period. The aforesaid determined period shall be two months from the date of issue of the notice.

46.2. The related third parties are entitled to provide information and/or evidence to substantiate their arguments.

46.3. Where a related third party fails to provide his/her own opinions until the expiration of the determined period, the consideration of the appeal shall rely just on the arguments provided by the appellant.

#### **47. Decision on settlement of appeal**

Relying on the arguments and evidence presented by the appellant, and by the related third parties, if any, the competent authority shall consider the appeal and render its decision on settlement of the appeal within the time limit of handling of appeal set forth in Paragraph 4, Article 27 of the Decree.

Before rendering its decision, the competent authority shall notify the appellant, the related third parties of the counter-arguments and counter-evidence provided by each party that could be used to settle the dispute, and the tentative decision of the competent authority on settlement of the appeal, and determine a period of two months counting from the date of issue of the notice for them to provide their own opinions. The time given to the appellant and the related third parties to provide their arguments and evidence at the request of the competent authority shall be regarded as the time given to the appellant to amend and supplement the dossier and shall not be added up in determination of the time limit

for handling of appeal.

**48. Effect of administrative decisions on settlement of appeal**

Any further procedure relying on results of the appeal settlement shall only be executed upon:

- a) The administrative decision on settlement of the first appeal, where the appellant did not take the second appeal or initiate an administrative lawsuit against that decision; or
- b) The administrative decision on settlement of the second appeal or the decision of the court, where the appellant took the second appeal or initiated an administrative lawsuit against the administrative decision on the first appeal.

**Section 4. TERMINATION OF VALIDITY, INVALIDATION OF THE TITLE OF PROTECTION**

**49. Right to request termination/invalidation of the Title of Protection**

During the term of validity of the Title of Protection, any third party may request termination or invalidation of the Title of Protection according to the provisions of Articles 28 and 29 of the Decree and in accordance with the procedures provided in this Section.

**50. Dossier of request of termination/invalidation of the Title of Protection**

50.1. The dossier of request of termination/invalidation of the Title of Protection shall be made in conformity with the formality requirements provided in the points from 5.1.a to 5.1.e of this Circular.

50.2. In one dossier of request, the requester may request termination/invalidation of a series of Titles of Protection for same reasons and arguments, provided that he/she pays the prescribed fee for the request in respect of each related Title of Protection.

50.3. The dossier of request of termination/invalidation of the Title of Protection shall include:

- a) The Request of termination/invalidation of the Title of Protection, which shall be made in conformity with the form provided in the appendix of this Circular;
- b) Evidence (when necessary);
- c) The Power of Attorney (where the request is filed through an Industrial Property Agent);
- d) The voucher of payment of the prescribed fee.

## **51. Handling of request of termination/invalidation of the Title of Protection**

51.1. The dossier of request of termination/invalidation of the Title of Protection shall be handled according to the procedures of handling of appeal as provided in Points 45, 46, 47, and 48 of this Circular.

51.2. If unsatisfactory with the decision of the National Office of Intellectual Property on handling of the request of termination of validity/invalidation, the requester and/or any related third party is entitled to appeal against the related decision or notice in accordance with the procedures set forth in Points 45, 46, 47, and 48 of this Circular, appropriately.

51.3. The contents of the Title of Protection which are subjected to the decision of termination/invalidation shall be published in the Industrial Property Gazette and recorded in the National Register of Industrial Designs.

51.4. Where the requester of termination of the Title of Protection is the owner of the Title of Protection, the National Office of Intellectual Property shall only consider whether the termination at his/her request is likely detrimental to the interests of any third party (i.e. whether there exists a licensing contract being in effect in respect of the related object) and not handle the related dossier pursuant to procedures provided in Points 51.1 and 51.2 of this Circular.

## **Chapter V AMENDMENT AND RENEWAL OF THE TITLE OF PROTECTION**

### **Section 1. AMENDMENT OF THE TITLE OF PROTECTION**

#### **52. Right to request amendment of the Title of Protection**

The owner of the Title of Protection has the right to request the National Office of Intellectual Property to record any change in his/her name and address and/or the change in the ownership of the Title of Protection (transfer of ownership by inheritance or by merger, separation, change of legal form of enterprise, or by decision of the court etc). The beneficiary of the ownership from the owner of the Title of Protection may also request recording of the change in the ownership over the Title of Protection. The requester of recording of the change in the name and/or address and/or the ownership as mentioned above shall pay the prescribed fee for amendment

of the Title of Protection.

### **53. Dossier of request of amendment of the Title of Protection**

For the purpose of amendment of the Title of Protection in the contents mentioned above, the owner of the related Title of Protection shall submit to the National Office of Intellectual Property the written request of amendment of the Title of Protection, which consists of:

- a) The Request of amendment of the Title of Protection, made in conformity with the form provided in the appendix of this Circular;
- b) The related Title of Protection in the original;
- c) Documents certifying the change in the ownership of the Title of Protection (e.g. certificate of inheritance; certification of merger, incorporation, separation of the legal entities; related decision of the court, etc) (for the request of recording of the change in the ownership of the Title of Protection);
- d) The voucher of payment of prescribed fee for amendment of the Title of Protection;
- e) The Power of Attorney (where the request is filed through an Industrial Property Agent).

### **54. Request of amendment of a series of Titles of Protection**

In one dossier, the requester may request the amendment of a series of Titles of Protection, and such request may also be incorporated into the request of amendment of the application provided in Points 30.1, 30.2, and 30.4 of this Circular if they relate to the change in the same contents, provided that the requester pays the prescribed fee for amendment of each related Title of Protection and/or application.

### **55. Handling of request of amendment of the Title of Protection**

The National Office of Intellectual Property shall consider the dossier of request of amendment of the Title of Protection within one month from the date of receiving the request. Where the request is found proper, the National Office of Intellectual Property shall conduct the amendment to the Title of Protection at the request, record the amendment in the relevant items of the National Register, and publish the amendment in the Industrial Property Gazette. Otherwise, the National Office of Intellectual Property shall notify the requester of its intention to refuse the request of amendment together with the reasons thereof, and determine the period of two months from the date of notification for the requester to correct the defects in the dossier, if any, or provide his/her arguments of opposition. If within the determined period the requester fails to

correct or corrected unsatisfactorily the defects, and/or fails to provide opposition or provided the unjustified opposition, the National Office of Intellectual Property shall issue the notice on official refusal of the request of amendment.

## **Section 2. RENEWAL OF THE TITLE OF PROTECTION**

### **56. Conditions for renewal**

In order to be renewed the Title of Protection for industrial design, within 6 months before the expiration of its validity term the owner of the Title of Protection shall file the dossier of request of renewal with the National Office of Intellectual Property. The dossier of request of renewal may be filed later than the aforesaid time limit, but not later than 6 months after the expiration of validity term of the Title of Protection, provided that the requester pays the renewal fee and an extra charge equal to 10% of the amount of the prescribed renewal fee for each month of late payment.

### **57. Dossier of request of renewal**

The dossier of request of renewal of the Title of Protection shall include the following documents:

- a) The Request of renewal of the Title of Protection, made in conformity with the form provided in the annex of this Circular;
- b) The Title of Protection in the original (where the requester requires the note on the renewal to be inserted into the original version of the Title of Protection);
- c) The voucher of payment of the prescribed fee for renewal;
- d) The Power of Attorney (for the dossier filed through an Industrial Property Agent).

### **58. Handling of dossier of request of renewal**

The National Office of Intellectual Property shall handle the dossier of request of renewal within the period of one month from the date of receiving the dossier. The National Office of Intellectual Property shall issue the decision of renewal, record the renewal in the National Register and publish it in the Industrial Property Gazette if the dossier does not fall into any of the following cases:

- a) The dossier of renewal request is invalid or filed not pursuant to the prescribed procedures;
- b) The requester is not the owner of the related Title of Protection. Where the dossier is defined as falling into one of the above-mentioned

cases, the National Office of Intellectual Property shall issue the notice of intention to refuse the request of renewal together with the reasons thereof, and determine the period of two months for the requester to correct the defects in the dossier, if any, or to provide his/her own opposition. If within the determined period the requester fails to correct the defects or fails to provide the justifiable opposition, the National Office of Intellectual Property shall issue the notice on official refusal of the request of renewal.

## **Chapter VI COLLECTION AND REFUNDMENT OF CHARGES AND FEES; EXTENSION AND SHORTENING OF THE DETERMINED TIME LIMITS**

### **59. Collection of charges and fees**

Upon receiving the dossiers/applications or any requests in the process of carrying out the procedures before it, the National Office of Intellectual Property shall check the vouchers of the payment of the prescribed charges and/or fees.

For the charges or fees having not been paid in full as prescribed, the National Office of Intellectual Property shall issue the request of payment, in which the kind and amount of each item of charges and fees requested to be paid shall be clearly stated, and send it to the related applicant/requester. For the item of charge or fee having been paid in full, the payers shall be provided two copies of the receipt of payment, in which the kind and amount of the paid fee or charge shall be clearly stated. The applicant shall attach one copy of the receipt to the related dossier/application to be the voucher evidencing the payment of the prescribed charge or fee.

### **60. Refunding of charges and fees**

The paid charge and fee shall be refunded partially or wholly at the request of the related payer in the following cases:

- a) The amount of charge or fee having been paid exceeds the amount as prescribed;
- b) Falling into the case prescribed in Subparagraph 2, Paragraph 2, Article 32 of the Decree.

### **61. Manner of refunding of charges and fees**

The requester of refunding of the paid amounts of charges and/or fees may opt for either of the following refunding manners: by direct repayment at the National Office of Intellectual Property or by the currency transfer service (post office, bank, etc); or transfer of such amounts into those

to be paid for other services and/or procedures. Where the refunding of charges or fees is made through the currency transfer services, the recipient shall pay the related remittance costs. The requester of refunding of charges and/or fees shall submit the request of refunding, made in conformity with the form issued by the National Office of Intellectual Property, in which the selected refunding manner shall be clearly indicated.

Where the request of refunding is accepted, the National Office of Intellectual Property shall issue the notice of repayment, in which the refunded amounts and the refunding manner shall be clearly stated, and send it to the requester. The recipient of the refunded amounts of charges and/or fees shall affix his/her signature in the voucher of refunding prepared by the National Office of Intellectual Property.

Where the request of refunding is not accepted, the National Office of Intellectual Property shall notify the refusal to refund to the requester, in the notice the reasons of refusal shall be clearly stated.

## **62. Extension**

Apart from the time limits subject to the specific provisions allowing otherwise extension, the determined period for amendment and supplementation of documents and/or for provision of arguments of opposition against the conclusion or intention of the National Office of Intellectual Property may be extended, at the request of the person who is carrying out the related procedures, for one more period equal to the determined period, provided that the requester pays the prescribed charge for the extension (in terms of charge for consideration of the dossier/application after the prescribed time limit).

## **63. Shortening**

The person performing the industrial property procedures before the National Office of Intellectual Property or other competent agencies may request such agencies to execute the procedures prior to the prescribed time limit, provided that the requester pays the prescribed fee for the consideration of the dossier/application prior to the prescribed time limit.

Depending on their capabilities and current circumstances, the National Office of Intellectual Property and competent agencies may accept or deny the request of execution of the procedures prior the prescribed time limit.

## **Chapter VII FINAL PROVISIONS**

#### **64. Responsibilities of the persons performing official duties related to industrial property**

64.1. All the officials, including the public servants and the employees working under the labor contracts, of the National Office of Intellectual Property and other competent agencies, who are assigned to perform the procedures provided in this Circular (hereinafter "official duty performers on industrial property") shall have the obligation to strictly observe the law provisions related to the duties they perform.

64.2. Where an official duty performer on industrial property commits any law-breaking acts, they shall be disciplined according to the provisions of the Government's Decree No. 97/1998/ND-CP of November 17, 1998 on disciplines for public employees and their material responsibilities, and pursuant to the Labor Code.

64.3. Where an official duty performer on industrial property commits any law-breaking acts, thus causing damage to other persons, they shall pay compensations for such damage according to the provisions of the Government's Decree No. 47/CP of May 3, 1997 on the settlement of compensation for damage caused by State employees and competent persons of the procedural agencies.

#### **65. Complaints**

Apart from the decisions and notices related to the right establishment procedures, the persons who is carrying out the industrial property procedures provided in this Circular may lodge complaints or initiate lawsuits against other decisions or notices of the National Office of Intellectual Property and other competent agencies according to law provisions on complaints, denunciations and administrative procedures. The order and procedures for lodging complaints and settling complaints provided in Article 27 of the Decree and at points 45, 46, 47, and 48 of this Circular shall also apply, *mutatis mutandis*, to complaints about the decisions and/or notices mentioned above.

#### **66. Rules on the application and particular steps in carrying out procedures of industrial design registration**

The rules on the applications and particular steps in carrying out procedures of industrial design registration pursuant to provisions of the Decree and this Circular shall be issued by the Ministry of Science and Technology in another document.

**67. Implementation**

This Circular shall replace the provisions on the procedures related to the establishment of industrial property rights to industrial designs provided in Circular No. 3055/TT-SHCN of December 31, 1996 of the Ministry of Science, Technology and Environment.

This Circular shall go into effect after 15 days from the date of publication in the Official Gazette.